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ABSTRACT

This third annual report of The Temporary State Commission on Child Welfare deals with the origin, development and rationale of the provisions of the Child Welfare Reform Act of 1979 (chapters 610 and 611). The Child Welfare Reform Act addresses itself primarily to three discrete program areas which operationally are intended to alter radically the substance and direction of child welfare policies and administration in New York State. The three areas referred to above include the following: a series of fiscal incentives designed to encourage the provision of preventive and adoption services; a series of fiscal disincentives and accountability measures designed to discourgae the failure to provide necessay preventive, adoption and foster care services; and a variety of requirements intended to ensure that the provisions of the Act are implemented in an appropriate way. In addition, the report deals with the Commission's current investigations in the fields of child abuse and alcoholism and also with the activities of the Subcommission on Juvenile Justice. The text of the Act and other related legislation are provided in the appendix. (Author/MP)

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THE CHILDREN OF THE STATE III

THE TEMPORARY STATE COMMISSION

ON CHILD WELFARE

MARCH, 1980

HONORABLE JOSEPH R. PISANI

CHAIRMAN

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A NOTE TO THE READER

"Children of the State III" is actually the sixth published Report of the Temporary State Commission on Child Welfare.

In addition to "Children of the State I" and "Children of the State II", which, like the present document, covered a variety of topics, we have also published three single-purpose reports:

-- "Barriers to the Freeing of Children for Adoption",

-- "Incentives to Adoptive Placements"; and

-- "Foster Care Reimbursement: A New Approach".

In 1979, we also prepared and published for the New York State Department of Social Services a "Training Curriculum on Freeing Children for Adoption", for child welfare workers and other concerned professionals.

TABLE OF CONTENTS

FOREWORD

I. CHILD WELFARE REFORM ACT OF 1979

A. BACKGROUND ..... 1 - 15

B. MAJOR PROVISIONS OF THE ACT ..... 16 - 40

1. Preventive and Adoption Services ..... 20 - 25

a. Preventive Services ..... 20 - 24

b. Adoption Services ..... 24 - 26

2. Child Welfare Planning and Administration .. 26 - 29

3. Fiscal Disincentives ..... 29 - 35

a. Limitations on Reimbursement for Foster Care and Preventive Services ..... 30 - 32

b. Utilization Review ..... 32 - 34

c. Ineligibility of Agencies to Receive Public Funds ..... 34 - 35

4. State Appropriations and Allocations of Foster Care Funds ..... 36 - 37

5. Implementation ..... 38 - 40

II. CHILD PROTECTIVE SERVICES ..... 41 - 47

III. ALCOHOLISM AND CHILD WELFARE ..... 49 - 50

IV. SUBCOMMITTEE ON JUVENILE JUSTICE ..... 51 - 59

APPENDIX - Copies of Selected Legislation Referred to in Report

FOREWORD

This Report, "Children of the State III", is devoted, in the main, to The Child Welfare Reform Act (Chapters 610 & 611) of 1979.

The impact of the introduction and enactment of this Law has been such that the Commission, as its primary author, has felt it desirable to present a historical overview of its background and a clear statement of its intent, as well as its provisions. The reader may confidently regard this document as authoritative although, at the operational level, the directives of the State Department of Social Services must also be consulted.

In addition, "Children of the State III" presents to the public a summary of major Commission projects now underway: a study of Child Protective Services; a study of the interrelationship between alcohol abuse and child abuse and neglect; a description of the background and rationale of our proposed revision of our present juvenile delinquency law, as well as other activities of our Subcommittee on Juvenile Justice.

Further information on the last three topics will be forthcoming in future reports of the Commission.

I. CHILD WELFARE REFORM ACT OF 1979

A. BACKGROUND

The Temporary State Commission on Child Welfare was created in 1974 with the primary mission of studying the complex of problems which surround the foster care system in New York State and proposing changes that would further the best interests of the children and families involved.

There are many such children and families in our State - children and adolescents who, because of their own problems, their families' problems, or a combination of the two, have been or may be forced to take up residence outside of their family homes.

In some cases, when, for instance, children have been abandoned or orphaned, foster care meets their immediate need for care and shelter. In other cases, like abuse and severe neglect, foster care can be the only responsible choice - temporarily. In family emergencies, such as fire or parental illness, foster care is often a temporary refuge. Frequently, when a child's emotional problems seem too severe for him or her to continue in the home setting, foster care offers a setting in which appropriate treatment can be provided.

Foster care takes many forms. Originally, it meant the orphanage or the 'poor house', and today, when a child's needs are thought to require it, it often still means an institutional setting in which shelter and sometimes treatment can be provided. More commonly, foster care means a family foster home arrangement where, in return for an allowance covering the child's food and shelter costs, an experienced foster parent or couple provides temporary or long-term care. Increasingly, foster care has also come to mean group home

care where a number of children will live in a quasi-family setting in an agency-owned and operated house, staffed by agency employees, where a family-like atmosphere is sought.

Over the last decade, in New York State, the number of children living in such foster care arrangements under the auspices of social services districts, at any one time, has ranged from more than forty thousand to about fifty thousand. This figure does not include the thousands of children whose care is directly provided by, among others, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities and the Division for Youth.

New York State's foster children are not a typical cross-section of the State's population in their age groups. More than half of them are residents of New York City. Most are of minority racial background. Almost all of them are poor, and the great majority were members of welfare clients' families before they entered care. A disproportionately large percentage of them suffer from serious physical, mental or emotional handicaps. The relative incidence of each of these divergent characteristics is increasing. Along with this trend has come a steady advance in the average age of the foster care population and a lengthening stay in care.

From the outset of its labors, the Commission has called attention to the fact that the State's child welfare system had been shaped originally to deal with a population with problems far less complex and severe than the children the system now serves; that the system was unique among American child welfare systems in some important respects; and that its historical development and pattern of

public financial support had led it down paths that diverged from the objectives which sound and humane public policy might better have dictated.

At the same time, we sought to make clear that the system, whatever its faults, was a prisoner of its history, its governmental mandates and the reimbursement patterns which shaped and limited its activities and its thrust.

The older child welfare institutions in New York State were created to meet the needs of the foundling, the orphan, and the waif during an era when the formal adoption of minors was infrequently practised and when effective methods of treatment of the mental and emotional ailments which afflict human beings were largely unknown. In those times, the common alternative to institutional life for such young people was premature independence or casual placement with a rural family which might (or might not) provide the child or adolescent with an adequate home, sustenance and education in return for the child's labor.

In those times and circumstances, institutionalization was commonly the most humane and preferred alternative. Most of these institutions - then as now - were operated under religious or humanitarian auspices, and the spiritual and moral well-being of the children were looked after by principled and dedicated adults according to the best lights then available to them.

During the Twentieth Century - and especially during the last few decades - the characteristics of the child welfare problem have changed radically.

One significant factor has been the increase and regularization, since the late Nineteenth Century, of child adoptions. Another has been a progressive decline in the number of true orphans, due to

the increasing effectiveness of disease prevention and medical care. Similarly, because of a variety of factors - increased use of birth control, legalized abortion, the lessening of the social and moral stigma attached to illegitimacy and the availability of public welfare - there are fewer foundlings and abandoned children.

Under these circumstances, it might have been reasonably expected that a drastic decline in the foster care population, as a whole, might have taken place.

And so it might have if other conditions had remained equal. But, instead, demographic, medical and attitudinal changes (some of which, ironically, contributed to the decline of orphans and foundlings) have helped to produce in our time a large foster care population with a different age, racial and health profile.

In general, the healthy White infant or younger child who is without serious handicaps and has been freed for adoption, can today be placed in an adoptive home with little difficulty. Increasingly, the same is true of Black children and those of mixed racial descent in the same age groups.

But, while the healthy, "normal" infant population has been fading from the foster care scene, an older, socially and educationally disadvantaged, often handicapped, child population, generally traumatized emotionally (to a greater or lesser extent) by the conditions which drive its members from their natural homes, and predominantly non-White, has replaced it in foster care.

The Commission's approach to the complex of problems which surround the foster care system, while it has been pragmatic with respect to strategy and tactics, has been rooted in the perception that the artificial environment of foster care, although it is the only

recourse for many children during certain periods of crisis, is, even at best, only the least detrimental alternative for the child's best interests.

The literature is replete with studies establishing that, for children, impermanent custodial arrangements are psychologically harmful per se and that permanence is a goal which should be attained as quickly as possible for each child whose development is threatened by actual or potential disruption of his or her normal living arrangements.

Recognizing these facts, the Commission has sought to separate, both conceptually and in practice, foster care from the treatment of the problems which have given rise to the foster care situations.

That it has been necessary to perform this seemingly self-evident exercise is largely due to the historical structure of the foster care reimbursement system. Geared, as it was originally, to a child population which was expected to remain in institutional care until the middle or late teens, the foster care system received government reimbursement on what was essentially a per diem, per child basis. Since most of the system's clientele was a normal child population receiving food, shelter, clothing and, broadly speaking, the other ordinary needs of its age group, this system of reimbursement was both equitable and convenient.

Unfortunately, as the system's population changed, along the lines we have noted, to one characterized by emotional malaise and the results of prior economic and educational disadvantage, this reimbursement formula provided no resources and no incentives to meet the special needs which today's population largely evinces.

While the institutions themselves have not been averse to seeking additional funds to meet these new needs (generally without success), they did not adequately promote the adoptions which would

have reduced the population which formed their income base. Thus, they found themselves in an unenviable situation. So did the children themselves. Throughout the child welfare system, ancient custom and practice had implanted the idea that treatment was a part of the foster care system. Along with it, as professionalization increased in the child welfare field, a certain elitism in the thinking of child care institutions began to take hold.

This was understandable. Child welfare professionals had been exposed to the highest standards of child rearing in the course of their studies and training. It was natural that, having at heart the highest interests of the children in their care, they sought, and often demanded, permanent homes which would meet these standards. There was even an unfortunate notion that children should be matched very closely (even in terms of their physical characteristics) with the prospective parents who would provide them with a permanent home. Therefore, not uncommonly, homes which were, by the ordinary standards of their own community, quite acceptable were thought to fall short of the criteria which the professionals had internalized. When dealing with children of minority background, these often unrealistic standards tended to insure that permanent foster care would be the destiny of this growing segment of the child population.

Consequently, child welfare practice tended to treat foster and adoptive parents as two distinct classes of people: the former were unemotional, closely supervised, impartial custodians - the latter embodied the highest parental qualifications.

In this well-intended but artificial world which the government and the agencies had jointly made, there was little room and little need to work with the natural parent of the child in foster care.

While the parent or parents might be a proper object of compassion and assistance by an agency qualified to deal with the parent's particular problem or set of problems, adult care and treatment were rarely the province of a child care agency.

And, even if the inclination to help had been present, both the funding and the expertise were lacking. The permanent surrender of an infant by an unwed mother or immature couple was the normal goal of good agency practice. Permanent foster care and discharge at maturity was the normal casework objective for an older child. And the efforts of natural parents to reclaim their children after a long personal or family crisis had been surmounted were often jealously contested and would frequently require the services of an attorney even though parental rights were theoretically and legally intact.

The perception that many things were radically amiss with the foster care system grew rapidly during the late 1960's and early 1970's, and it was not confined to critics from within the system or academia. Voluntary organizations of adoptive parents, would-be adoptive parents and foster parents, as well as community organizations, joined dissatisfied professionals as a constituency advocating change.

Their activities led to intensified involvement by the Legislature in which this Commission's Chairman took a leading part. In 1969, the Foster Parents Preference Act provided that (other things being equal) preference and first consideration in the adoptive placement of children in foster care should be given to foster parents who had had the children in their care for twenty-four (now eighteen) months or more. As a result of this reform, foster parenthood, a relationship which had previously been considered an obstacle to adoption, became - in law, if not invariably in agency and caseworker practices - a positive factor. Its effects, however, were limited to those children for whom

an adoptive placement was actually sought.

But a reform primarily philosophical and attitudinal in its effects, while very significant in those spheres and productive of what was to become a major trend toward foster parent adoptions, did little to solve the problem of permanence for the thousands of children in foster care who, although free for adoption because of voluntary surrenders or eligible to be freed for adoption under the abandonment and permanent neglect statutes, continued to linger in apparently open-ended foster care.

In 1970, Assemblyman Pisani concluded that an independent and authoritative review process was needed if the movement of children out of foster care to their original families or to new adoptive families was to be commenced on the scale needed. Accordingly, he introduced legislation which became Section 392 of the Social Services Law. This law, in its original form, required that the status of each child in foster care for a twenty-four month period must be reviewed by a Family Court Judge who would have the authority to direct the authorized agency having care or custody of the child to make an appropriate disposition or to continue foster care. Despite the nearly unanimous opposition of authorized agencies and social services departments, the bill was signed by Governor Nelson Rockefeller that summer.

It soon became apparent that further refinements in the legislation were needed if its effectiveness was to be maximized, specifying, among other things, the precise alternatives available to the courts. Such legislation was enacted during 1971.

While the opposition to Section 392 which was present at its birth still continues in some quarters, the Commission is satisfied that its effects have been overwhelmingly beneficial. Many children who, but for Section 392's safeguards, would still be in foster care have returned home or have been adopted as a result, direct or indirect, of the intervention of the judicial power. Even more significantly, the mere knowledge that agency decisions will be subject to outside scrutiny has redirected the thrust of agency policies in the State of New York. Impartial studies and the testimony of a great majority of individuals intimately involved in the child welfare process, as well as similar policies adopted since 1970 in other states, have confirmed the wisdom of this reform.

But Family Court Review does little or nothing to prevent unnecessary or ill-advised foster care placements. Throughout the period which we have been discussing, the phrase "preventive services" was frequently heard wherever and whenever people dissatisfied with the foster care system rallied. By "preventive services", the notion of providing help to a child or family to obviate the need for or reduce the duration of a foster care placement, was generally understood.

It would, of course, be absurd to suggest that providing homemaking, mental health or other supportive services to children and their families was a new idea. But the linkage of such services to foster care with the intention of preventing foster care <u>was</u> relatively new. The advocates of this linkage pointed to a number of successful projects in which likely foster care placements had been averted by services successfully provided in the home or neighborhood setting while a family was still intact.

Encouraged by the reports of these projects, Senator Pisani introduced legislation, which became Chapter 911 of the Laws of 1973, appropriating $500,000 for demonstration projects testing the effectiveness of intensive family casework services in averting unnecessary foster care placements.

The ground rules laid down for the "911" projects were designed to test the concept to the utmost by limiting the interventions to some of the least promising cases - those in which a social services official had already determined that foster care would be necessary if preventive services were not provided.

Local social services districts were invited to submit proposals, and three of the applicants - New York, Westchester County and Monroe County - were selected. The Child Welfare League of America was retained to participate in the development and evaluation of specific projects. The League's Report, "A Second Chance for Families: Evaluation of a Program to Reduce Foster Care" was published in January 1976. The report, in comparing children and families receiving preventive services with a control group, domonstrated that the provision of these services had a significant impact in reducing the need for foster care placements. Furthermore, the estimated cost of preventive services was substantially less than that of foster care maintenance.

Prior to publication of the Child Welfare League's Report, the Commission, having learned of the project's success, introduced legislation in 1975 freeing preventive services funding by the State of its dependence on the concurrent availability of federal funds and permitting the provision of such services to a child's entire family when necessary. These bills became law.

Unfortunately, the economics of preventive services funding continued to militate against the use of even those limited sums which the Legislature saw fit to appropriate ($3.75 million in 50 percent State matching funds each year since 1975) - especially during a time, when both for New York State and New York City, fiscal disaster loomed.

Yet the fault lay less with the Legislature, the Governor and the local and State departments of Social Services than with the purblind policies of the federal government.

Washington has long reimbursed our State governments to the extent of 50 percent of the cost of foster care for AFDC eligible children while, under New York law, the remaining 50 percent is divided equally between the State and the responsible social services district. The district, faced with a foster placement decision, knows that it will (except in the case of a non-AFDC eligible placement) pay only 25 percent of the cost.

For preventive services, by contrast, Washington generally has contributed nothing except in such haphazard situations as the fortuitous availability of appropriate Title XX programs in a particular family's case.

Therefore, our social services districts have approached the systematic provision of preventive services with the knowledge that, while the total cost may well be less, the local share will be 50 percent with the added probability that many cases will still end up or remain in foster care after all.

An added element of uncertainty for local decision-makers has been the fact that preventive services funding by the State has been meager and offered only on a year-by-year basis, leaving no reasonable assurance that a local program, once established, will be able to rely on continued support from Albany.

As a result, thousands of children continued to enter or remain in foster care for want of a better alternative, and thousands of families which might have been helped to regroup and recover from the problems that troubled them were permitted to drift to destruction.

Not the least element of the continuing tragedy was that it was suffered to continue in spite of the fact that responsible authorities - federal, state and local, public and private - failed to end it sooner by intelligent cooperation as was urged by this Commission based on the accumulated evidence that much of it was preventable.

The provision of preventive services for children and their families, before, during and after foster care, has been, of course, only one of the Commission's major areas of activity.

Sadly, thousands of families have not been able either to retain or regain custody of their natural children. Often the child's best interests, as well as the parents', dictate that they should not do so.

For these children, as well as for those children and families who will benefit from preventive services and/or foster care, our Commission's philosophical goal - permanence - is the same. Finding adoptive parents for the obviously adoptable child who had been surrendered voluntarily was not a serious problem. There was a decided lack of success, however, in actively promoting voluntary surrenders, in terminating parental rights and in finding and arranging timely adoptive placements.

For the older child, the child of minority racial background and the child who suffered from mental, emotional and physical handicaps, the prospect of adoption was remote.

In addition to the persistent social work "folk wisdom" that some children were "adoptable" and some were not, there were many reasons why relatively few "hard-to-place" children were adopted.

There was the difficult (and often impossible) quest for the perfect adoptive couple and home.

There was an illogical congeries of laws and legal procedures encumbering the road to termination of parental rights.

There was (and is) a widespread problem of communication and understanding between the key professions of social work and law.

Especially for many of the increasing number of severely handicapped children who had been institutionalized or were in long-term foster care, there were few homes financially able to undertake adoptions even when families were inclined to do so.

During 1976 and 1977, the Commission mounted a vigorous attack on this complex of problems. In 1976, after intensive study of the problems connected with the terminating of parental rights, the Commission issued a Report titled "Barriers To The Freeing of Children For Adoption" which resulted in considerable simplification and rationalization of legal procedures involved in the process of termination of parental rights.

The passage of the 1976 legislation inspired by the "Barriers" Report was not the end of the Commission's role in the facilitation of the termination process. In 1979, under a grant from the State Department of Social Services, the Commission created a curriculum for the instruction of social workers and case workers in their roles

in preparing termination cases and assisting the parties concerned.

In 1977, the Commission completed another major project dealing with the promotion of adoptions for those children legally free for adoption as a result of our previous efforts. Published under the title "Incentives to Adoptive Placements", the document surveyed the present status of New York's efforts to deal with the problems of hard-to-place children and recommended a variety of measures, including a substantial enrichment and expansion of New York's Adoption Subsidy program. It was adopted by the Legislature and signed into law.

In 1977 also, the Commission, perceiving the apparent inability and even unwillingness of the many relevant agencies of State government to coordinate their family welfare and child welfare programs adequately and their concomitant failure to encourage similar coordination at the local level, recommended the creation of the New York State Council on Children and Families. The Council was, pursuant to the Commission's recommendation, placed in the Executive Department, and is now chaired by the Secretary to the Governor, making it a strong tool of Executive decision-making.

Throughout this period, and in spite of the success of many of the Commission's proposals, the central problems which had brought the Commission into being persisted. Preventive services, as an alternative and as a supplement to foster care, were more widely available, but their availability did not approach the need. Funding was inadequate and unattractive. Policies had been enacted to facilitate substantial improvements on an individual basis in the movement of children through the foster care system - both to their own homes and new adoptive ones. Yet, with changes in the foster care population, average length of stay was still increasing.

Oversight of the child welfare system and accountability within it were still lacking.

Individual institutions persisted in flouting established public policy, and there was both an evident lack of compliance and an unwillingness on the part of some government organizations to avail themselves of the means of compelling compliance.

Accordingly, after extended and intense study of foster care management and planning, the Commission issued, in May 1978, a major new study: "Foster Care Reimbursement: A New Approach".

It proposed a system of financial incentives and disincentives, based on clear criteria to encourage and enforce proper treatment of the problems of children and families.

In effect, the Report proposed a new State aid system for foster care which would enrich State reimbursement during the crucial first 90 days of a child's stay in care. After that 90 day period, State aid would revert to the normal 50 percent rate or be decreased in proportion to a district's or agency's failure to meet certain objective criteria of good practice for similar groupings of children ("peer groups").

The proposal also mandated denial of State aid altogether during certain violations, e.g. failure to comply with Section 392 of the Social Services Law or to comply with court orders thereunder.

B. MAJOR PROVISIONS OF THE ACT

The Legislature concluded its 1978 session without having acted upon the recommendations of the Temporary State Commission on Child Welfare as reflected in its report entitled Foster Care Reimbursement: A New Approach. At the time, this lack of response was attributed to resistance, (not only by the Legislature but, more significantly, by the social services professionals, agencies and institutions most directly affected) to the unfamiliar concepts advanced by the Commission, such as the notion of "peer groups", and also to a lack of complete understanding of the intricacies and significance of the proposal. It was clear that there was a need for futher discussion and conceptual development.

Following the close of the regular session of the 1978 Legislature, the Commission convened a series of three public hearings on its reimbursement proposals during September and October in Rochester, Binghamton and White Plains. These were followed by informal meetings in November and December with key representatives of major State and local governmental agencies, child care associations and agencies, and representatives of foundations and citizens organizations concerned with the welfare of children. As a result of these meetings, the Commission, after much intensive discussion, developed the framework for what was to become the Child Welfare Reform Act of 1979. Several elements were developed as the bases for an effective system of reimbursement for foster care and preventive services and for the management of the child welfare system

to assure effective and appropriate delivery of care and services to promote permanence for children whenever possible.

These elements included: an enriched open-ended State reimbursement formula as an incentive for local departments of social services to provide preventive services (to counterbalance federal foster care reimbursement policies creating the opposite effect); the creation of disincentive elements in the State's reimbursement formula to discourage the provision of unnecessary or inappropriate foster care services and to penalize noncompliance with specific, existing statutory procedures designed to ensure responsible management of foster care; a utilization review concept to create a framework for standards to measure the appropriateness and efficacy of foster care services; and procedures for declaring ineligible for the receipt of public funds those child care agencies demonstrating a consistent pattern of providing inefficient and ineffective child care services in defiance or disregard of State laws and regulations.

These elements and concepts were then drafted in bill form, approved by the Commission, and extensively discussed with key representatives of the Senate Social Services and Finance Committees, the Assembly Child Care and Ways and Means Committees, the Temporary State Commission to Revise the Social Services Law, the Executive Chamber, the State Department of Social Services and the State Division of the Budget. At the same time, the Assembly Child Care Committee under the chairmanship of Assemblyman Howard Lasher, was also involved in developing proposals in this area and had drafted its own bills.

During this deliberative process, copies of the draft Commission bill were distributed to social services commissioners and child care agencies throughout the State, and their reactions, comments and recommendations were solicited. It soon became apparent that a strong consensus of support was emerging around the Commission's proposal and that a major, almost revolutionary, change in New York's child welfare system was at hand. The Commission was determined to utilize the momentum of this consensus and act upon it to achieve a coherent, efficient and enlightened child welfare system for the children of the State.

During the course of deliberations over the Commission's proposals, several significant concepts, including a number of proposals contained in the Assembly Child Care Committee's draft bill, were added and incorporated in the bills which were to become the Child Welfare Reform Act of 1979. Included among these were:

1) an annual limitation on State appropriations for foster care under certain circumstances;
2) increased State reimbursement for adoption services and other adoption reforms;
3) limitations on the extent to which the local share of preventive services expenditures could be borne by non-tax levy funds, and other restrictions to prevent the misuse of the new preventive services funding stream and maximize the availability of other funding sources;

4) requirements for annual district-wide child welfare services planning as well as for individualized service plans for all recipients of foster care and preventive services; and

5) the creation of a State Child Welfare Standards Advisory Council as a partner in the development of State standards for implementing the new law.

Legislation incorporating these many features was introduced in the Senate by Senators Pisani, W.T. Smith and Halperin, at the request of the Temporary State Commission on Child Welfare and the Temporary State Commission to Revise the Social Services Law, and in the Assembly, by Assemblymen Lasher, Fink, Kremer, Sanders and Vann.

The bills (Senate 6222-A and Assembly 8146-A) were passed by both houses of the Legislature by overwhelming margins and signed into Law by Governor Carey in a public ceremony on July 11, 1979, becoming Chapters 610 and 611 of the Laws of 1979, respectively.

In signing the bills, the Governor said:

> "This legislation will encourage and enhance the permanence and stability of family life for both children and their families and ensure that our State's child-caring system concentrates on assisting troubled families to resolve their difficulties without the need for the disruptive removal of children and their placement in foster care.
>
> "While the emphasis on preventive services will reduce the number of children who require placement out of the home, the legislation supports and directs efforts at assuring that all foster care placements made are necessary and appropriate and will assist in the development of standards which will provide guidance to local districts as well as providing criteria for evaluating their performance. In addition, the bill impacts those children for whom adoption is the plan for permanency by removing certain barriers to adoption which currently exist and by providing additional incentives to adoptive parents."

The following sections will discuss the provisions of the Child Welfare Reform Act of 1979, their purpose and intent, and major issues involved in their implementation. The text of the Act itself appears in an Appendix to this report.

The Child Welfare Reform Act addresses itself primarily to three discrete program areas which operationally are intended to alter radically the substance and direction of child welfare policies and administration in New York State. The emphases contained in the Act may rightly be viewed as prototypes of actions that need to be taken by the Congress and, perhaps, other States.

The three areas referred to above include: a series of fiscal incentives to encourage the provisions of preventive and adoption services; a series of fiscal disincentives and accountability measures designed to discourage the failure to provide necessary preventive or adoptive services, or the inappropriate provision of foster care services; and a variety of requirements intended to assure that the provisions of the Act are implemented in a timely, coordinated fashion.

1. Preventive and Adoption Services.

a. Preventive Services

Under State law governing the provision of preventive services prior to the enactment of the Child Welfare Reform Act (particularly the annual local assistance budgets adopted by the State beginning in 1975), New York had made available 50 percent State aid to local governments for the operation of distinct preventive service projects designed to reduce or minimize the need

for foster care or to enable a child to be placed in a less restrictive form of foster care than would otherwise be possible in the absence of such services. The State's commitment under this aid program was limited by the amount of annual appropriations made for such purposes - or $3.75 million in each of the last four fiscal years. This investment produced a $7.5 million annual commitment supplementing preventive services programs to the extent that local governments were able to provide such programs with federal and State aid pursuant to Title XX of the federal Social Security Act and other aid programs.

The major weaknesses of this fiscal approach included the following: (1) as noted earlier, the limited 50 percent State aid commitment was no strong incentive to a social services district to offer preventive services when, under federal reimbursement for foster care, the local share was only 25%; (2) localities anxious to establish preventive programs could receive no assurance that State aid would be continued in subsequent fiscal years; and (3) preventive services authorized by the State were restrictive in scope, permitting little more than crisis intervention (i.e., for the child at imminent risk of placement).

The Child Welfare Reform Act remedies these deficiencies in various ways. For the State fiscal year ending March 31, 1980, the Act provides an immediate increase in State aid for preventive services from $3.75 million to $5.95 million, and authorizes the provision of such services without regard to approval of specific projects (i.e., on a per child basis). In addition, the Act makes

clear that preventive services may be provided to children at risk of foster placement on a pre-placement, in-care, and aftercare basis. It is anticipated that these provisions governing preventive services funding and the amount of State funds commited for such purposes will be continued for the 1980-81 State fiscal year.

Beginning April 1, 1981, a new Title Four of Article Six of the Social Services Law, governing preventive services for children and their families, will take effect. The new Title contains a definition of preventive services which is sufficiently broad to encompass preventive services provided to children and families, either directly by a social services official or through purchase of services, during three distinct periods: (1) prior to placement of a child in foster care when such services could or would avert or minimize the need for foster care placements; (2) during the time a child is in foster care, in order to facilitate the early return of the child to the family; and (3) after discharge of the child from foster care in order to prevent a return to foster care.

Under Title 4, the provision of preventive services is mandated if a local social services official makes a finding that a child will be placed or continued in foster care in the absence of the provision of preventive services and that it is reasonable to believe that the provision of services will enable the child to remain with or be returned to his family. Mandated preventive services are subject to reimbursement by the State at the rate of 75%, which reduces the local share to 25%, counteracting the federal fiscal biases which formerly encouraged foster care placement. Such reimbursement will be made available, under the new permanent provisions of State law, on an open-ended basis.

Preventive services, pursuant to Title 4, may also be provided by a social services official on an optional basis when the aforementioned finding is not made, in which case 50 percent reimbursement will be available within the limits of annual appropriations made for such optional services by the State Legislature.

During the course of the development of this new Preventive Services Title, there were some who urged that all preventive services should be mandatory and subject to the new enriched reimbursement formula. The Commission agrees with this position, at least in concept, and hopes that it will become a reality in the not-too-distant future. However, fiscal constraints in New York State have necessitated the more cautious, but extremely progressive, approach taken by the new statute.

Ensuring that preventive services programs will be operated on an orderly, planned basis designed to prevent misuse of funds and other program abuses was an important factor in the design of the new preventive services statute. Accordingly, the following conditions, limitations and requirements have been incorporated into the new preventive services Title: (1) a mandate upon the State Department of Social Services to develop appropriate program and fiscal standards with which all preventive services programs throughout the State will be required to comply. Included within this mandate is the critical task of developing a workable definition of the scope and nature of aidable preventive services, one which may be expected to be subject to considerable legislative scrutiny.
As noted earlier, preventive services programs and fiscal standards

are to be developed with the participation of a new Child Welfare Standards Advisory Council of 15 members created by the Act, which will be broadly representative of public and voluntary agencies, citizens groups and concerned individuals and organizations; (2) a stipulation that mandatory preventive services for individual children can be provided for only a six-month period unless the local social services official recertifies the appropriateness of such services; (3) a limitation on the extent (one-half) to which the local share of the costs of preventive services may be borne by non-tax levy funds, modified by the exclusion of certain services previously supported by non-tax levy funds prior to April 1, 1981; (4) a requirement that other funding sources, such as those available under Title IV-A, XIX and XX of the federal Social Security Act, and under provisions of State law, to the extent that such funds are available and have not been exhausted, be utilized before a locality resorts to the new Title, as well as a specific "maintenance-of-effort" requirement with regard to a social services district's use of Title XX funds for preventive services. Such limitations were incorporated into the Child Welfare Reform Act to insure that the new enriched preventive services programs would represent an additional local-State program commitment rather than a substitute for pre-existing programs. It was also intended to assure maximum utilization of available federal funds.

b. Adoption Services

The above described fiscal incentives for the provision of preventive services to children and families, as we have

indicated, were designed in part to overcome the pre-existing reimbursement bias in favor of foster care. However, the maintenance or restoration of a biological family unit, while the most desirable objective in promoting permanence for children, is often impossible and sometimes undesirable. As the Legislature has stated:

> "... the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and
>
> "when it is clear that the natural parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child..." (Section 384-b of the Social Services Law).

It is in furtherance of this public policy objective that the Legislature in 1976 mandated the provision of a wide range of adoption services by social services districts with State reimbursement of local expenditures for such purposes set at 50 percent. The Child Welfare Reform Act takes the next necessary step by making this mandate more of a fiscal reality. Under the provisions of the Act, adoption services will be subject to State reimbursement of 75 percent, effective in April 1981, thereby overcoming the fiscal advantages foster care previously enjoyed and placing adoption on the same reimbursement level as mandated preventive services.

In addition, the Child Welfare Reform Act includes three other provisions designed to encourage appropriate adoptive placements throughout the State. The provisions of law relating to the State Adoption Service have been amended to require more complete photolisting with the Service of children free for adoption. The amendment provides that the only valid reason for the deferral of the

listing of a child is that the child is fourteen years of age or older and will not consent to his adoption. This amendment was considered necessary in order to reverse the recent trend to excessive deferrals of picture listing permitted by the regulations of the State Department of Social Services.

Second, provision has been made for a process by which persons whose applications to adopt children have been denied or not been acted upon by public and private adoption agencies may appeal that denial to the State Department of Social Services. The Department will be required to hold a hearing on the denial or inaction and render a decision thereon pursuant to the fair hearing provisions of the Social Services Law. The Act also requires the Department to promulgate standards that must be followed by adoption agencies in evaluating adoption applicants.

Last, in further recognition that foster parents are, and have a right to be, regarded as potential adoptive parents, the Child Welfare Reform Act reduces from 24 months to 18 months the period that foster parents must have cared for a foster child to qualify for statutory preference as the child's adoptive parents.

2. Child Welfare Planning and Administration.

The emphasis which the Child Welfare Reform Act places on preventive services should not lead the reader into the belief that the problems highlighted by the Act or the solutions proposed therein are single-dimensioned. On the contrary, the Act recognizes that a variety of services - preventive, adoption, foster care, and others - must be made available and coherently utilized on a case-by-case, district-wide and Statewide basis if the child welfare

system is to have maximum impact on real problems. Toward this end, the Child Welfare Reform Act includes two significant concepts designed to instill planning and coherence in child welfare management. These concepts - a requirement for the development of an annual district-wide child welfare services plan and the preparation of a specific services plan for each child being considered for or placed in foster care - will, it is hoped, accomplish several objectives which are long overdue in New York. First, they will compel social services districts to devote a substantial amount of thought to the needs of the children and families of the community and to the various ways in which those needs may be met. Second, the planning mechanisms will facilitate the implementation of various accountability measures discussed later in this report. Third, well-established management principles requiring reference to specific time frames, goals and tasks will be applied to a system often typified by vagueness and imprecision, not to mention inefficiency in the expenditure of taxpayer dollars. Finally, these concepts will enable the system to be responsive in a timely fashion to human needs rather than reactive to situational crises.

With specific reference to district-wide child welfare services planning, a new section 409-d of the Social Services Law will require social services districts to prepare and submit for the State Department's approval, annual program and expenditure plans governing the provision of the ambit of child welfare services - specifically defined by the Act to include preventive services, foster care maintenance and services, and adoption services. Such plans must include

the district's assessment of the child welfare services needs of the community, the resources available to meet those needs, and the costs involved. To assure that the child welfare planning process will be truly meaningful rather than the mere addition of new paperwork requirements, the Act specifies that the plan be developed in conjunction with the district's Title XX plan and that it be consistent with the district's child protective services plan and other existing planning requirements. Moreover, it is the intent of the Act that district-wide child welfare services plans shall serve as fiscal planning instruments to be utilized in the development of the State's annual local assistance budget. To this effect, the Act requires submission of approved local plans by the State Department of Social Services to the Director of the Budget on or before the fifteenth day of October, beginning in 1980.

It is significant that such annual appropriations will be subject to new provisions of the Social Services Law (discussed below) which may limit the amount of federal and State funds to be apportioned for social services districts for foster care beginning in 1981.

The second of the two new management devices created by the Act is a codification and expansion (to preventive services) of preexisting State administrative requirements for the development, implementation, and ongoing review by social services districts of realistic, time-limited and goal-oriented plans for every child identified as under consideration for placement in foster care or actually placed in such care. Among other things, each plan will include description and assessment of the child's or family's problems requiring social

services intervention, identification of the services required and, when placement in foster care is determined to be necessary, the plan must specify the reasons for such determination, the nature of the foster care placement to be utilized, and the agency's plan for termination of services.

Of particular importance to the new planning requirements discussed above, is the Child Welfare Reform Act's stipulation that preventive services under the new Title 4 of the Social Services Law must be provided in accordance with the child's service plan, as well as the district-wide child welfare services plan, thereby imparting broader operational input to those otherwise discrete management processes.

3. Fiscal Disincentives

The Commission, in its past reports, has consistently reiterated the theme that declarations of public policy, new and enriched funding streams and greater management-accountability tools, while highly beneficial in themselves, are insufficient to interrupt the inertia of a century-old foster care machine designed to deal with the consequences of family dysfunction, rather than its prevention. As early as 1976 in its second annual report to the Governor and the Legislature (Children of the State II), the Commission recognized that

> "Accountability in both the public and voluntary sectors of the child care system requires....when acceptable performance is not forthcoming, the judicious and firm invocation of such sanctions as the withholding of State aid, decertification, and revocation of licenses..."

Similarly, in its report entitled Foster Care Reimbursement: A New Approach (May, 1978), the Commission expressed its conviction that the implementation of administrative reorganization techniques, improvements in the placement process, and the introduction of new management and accountability measures may not be sufficient to promote necessary and expeditious reordering of the child welfare system. It stated that

> "...[F]ar more basic recommendations are in order if the majority of the State's public charges are not to spend their whole minority in foster care. We seek to speed up the process of change. To do so necessitates action which creates an economic imperative. Social services districts and foster care agencies have no fiscal incentives to operate any more efficiently or to modify outmoded and inappropriate practices any more expeditiously than now because it is not in their economic interest to do so."

It is upon this conclusion of the Commission, reached after much thought and not a little pain, that the third cornerstone of the Child Welfare Reform Act is built - a tripartite approach to the imposition of economic sanctions against agencies which violate clear statements of public policy intended to promote permanence for children and families, as set down by statutory provisions and administrative regulations.

a. Limitations on Reimbursement for Foster Care and Preventive Services

The Child Welfare Reform Act adds a new section 153-d of the Social Services Law, which specifically denies public reimbursement to social services districts for expenditures for foster care and preventive services when their delivery of such care or services clearly violates any one of several different statutory

requirements which together are intended to assure that children receive appropriate care and services. Such requirements include mandates for judicial approval and review of foster care placements, referral of legally free children to the State Adoption Service and compliance with individual child service plans. It is important to note that the aforementioned requirements are objective in nature and easily ascertainable. To facilitate retrieval of information to determine whether or not child care agencies comply with these requirements, the Act amends the law creating the State Child Care Review Service (a statewide computerized child welfare information system created by 1976 legislation prepared by the Commission) to require that the Service collect and maintain necessary child-specific data files to implement this provision (as well as other provisions relating to utilization review described below) which will become operative in April, 1981.

It should be noted that a social services district which has been denied reimbursement pursuant to this section is not relieved of its duty to continue to provide care and services to the child. To do otherwise would completely dilute the effect of the fiscal sanction and, worse, would eliminate any incentive to come into compliance with State law for fear of continuing denials of reimbursement.

Although this fiscal sanction is directed at the social services district which has statutory responsibility for care of the child, it is not blind to common practice, particularly in the City of New York, for social services districts to purchase care and services from a voluntary agency by contract. The Act requires the social services district which has been penalized under the provision to pass

along the financial penalty to the voluntary agency which occasioned the loss. Disputes regarding responsibility are reviewable by the State Department of Social Services under fair hearing provisions of the Social Services Law.

b. Utilization Review.

As described above, newly enacted limitations on State reimbursement of local expenditures will deal with specific, objectively measured actions or inactions.

However, the Commission believed it equally, if not more, important for fiscal sanctions to be imposed upon child care agencies delivering inferior or inappropriate care or services to children and families. Accordingly, the Child Welfare Reform Act includes a child welfare utilization review concept as added by a new Section 398-b of the Social Services Law. Pursuant to this section, which will be operative on April 1, 1981, the State Department of Social Services has been charged with the responsibility to develop program standards (in partnership with the new Child Welfare Standards Advisory Council) to determine whether: (1) the particular placement of a child in foster care is necessary; (2) the type or level of placement is appropriate; (3) the agency has exercised diligent efforts, where appropriate, toward the discharge of the child to his own home or an adoptive home; and (4) preventive services have been provided in accordance with the new Title 4 of the Social Services Law and the regulations of the State Department of Social Services. The Department is required to deny reimbursement to a social services district for care or services provided to a child, as well as the administrative costs incidental thereto, when the provision of the care of services violates these standards.

As in the case of the previously discussed State aid limitations, the utilization review sanctions must also be passed on by the social services districts to the voluntary agency responsible for causing the penalty, subject to the same right to Departmental fair hearing review. Here too, imposition of the sanction will not relieve the district or voluntary agency of its responsibility to continue to provide care or services to the child.

The State Department of Social Services is required by the Child Welfare Reform Act to apply the new utilization review standards by reviewing, in accordance with generally recognized statistical sampling methods, agency case records and other appropriate data compiled and maintained by the State Child Care Review Service.

The law requires denial of reimbursement with respect to each particular case found to be in violation of the standards. Moreover, if the Department finds that more than seven and one-half percent of a social services district's sampled cases violate the utilization review standards, it must deny reimbursement across the entire caseload of that district to the extent that the violation rate exceeds seven and one-half percent.

For example, assuming a State audit team finds a utilization review violation rate of ten percent of sampled cases in a given district, two penalties ensue: the first would consist of denial of State aid for the specific cases which violated the standards; and the second would consist of denial of reimbursement for two and one-half percent of the remaining unsampled cases in the districts.

It should be noted that Section 398-b makes clear that the newly created State audit function is not intended in any way to abrogate or dilute the responsibility and authority of any social services district to supervise, monitor and audit care and services provided to chidren and families by voluntary agencies pursuant to contract with such districts. Further, the law requires the new audit function to be performed by the State Department of Social Services in coordination with other State and local agencies in order to avoid or minimize duplicative, repetitive and unnecessary reviews and inspections of programs, facilities and records.

c. Ineligibility of Agencies to Receive Public Funds.

The third major sanction contained in the Child Welfare Reform Act is one which may be regarded as the ultimate sanction in that, in most cases, it will have the practical effect of putting the penalized agency out of business. Pursuant to a new Section 387 of the Social Services Law which will take effect on April 1, 1981, the State Department of Social Services is required to promulgate standards, with the participation of the State Child Welfare Standards Advisory Council, pursuant to which an agency, or one or more of its programs or facilities, shall be determined ineligible to receive public foster care funds. These standards include: lack of public need, geographic or programmatic; failure of the agency to promote permanence for children through discharge to their own families or through adoption - such failure to be measured by various factors including length of stay in foster care for similar groups of children;*

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* For the genesis of the "peer group" concept, see "Foster Care Reimbursement: A New Approach", (May 1978), Report by the Temporary State Commission on Child Welfare.

and a pattern of repeated violations of law or regulation leading to denial of reimbursement under the two new fiscal sanctions provisions described above.

Any determination by the Department of an agency's ineligibility to receive public foster care funds is subject to review, in accordance with the hearing procedures of the Social Services Law applicable to the revocation, suspension or limiting of operating certificates; it is also subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules. Under the Act, a social services district is specifically prohibited from purchasing foster care from any agency which has been determined ineligible to receive public foster care funds, and any existing contract between a social services district and an agency is deemed null and void to the extent that it may be inconsistent with this provision.

The combined operation of the series of fiscal disincentives described above may well have an impact on the child welfare system in New York State that is far less punitive than constructive. It is hoped that the existence and administration of the new sanctions will cause many child care agencies to seriously modify time-honored, but no longer acceptable, child care practices and cause others to change their orientation and very possibly develop new service patterns, such as the offering of preventive services to children and families as contemplated by the Child Welfare Reform Act.

4. State Appropriations and Allocations of Foster Care Funds

The Child Welfare Reform Act establishes a major new framework for the appropriation of funds by the State Legislature for foster care. Despite the complexities of a new Section 153-e of the Social Services Law added by the Act, its intent is clear: a social services district will continue to be entitled to claim State reimbursement for its foster care expenditures except where it is demonstrated that the care provided by the district is substandard or otherwise inappropriate. In other words, unacceptable foster care will be "capped", acceptable foster care will not.

Very simply stated, the Child Welfare Reform Act establishes a new process for the appropriation and allocation of foster care funds by the State. Such appropriations will be set each year during the traditional Executive Budget process which will be augmented under the terms of the Act by the submission of district-wide child welfare services plans to the Division of the Budget beginning in October of 1980. For the 1981-82 State fiscal year and thereafter, legislative appropriations for foster care will be allocated by the State Department of Social Services, subject to the approval of the Director of the Budget, in accordance with such plans and other factors including: previous district-by-district expenditure experience; denial of reimbursement under other provisions of the Child Welfare Reform Act; district population characteristics and caseload trends, and unusual circumstances affecting particular districts.

Notwithstanding this apparent ceiling on district allocations for foster care, every social services district is entitled to apply for and receive additional State reimbursement unless the State Department of Social Services can show that the district provided substandard or otherwise inappropriate foster care. Substandard or inappropriate care is defined by the Act as that care which would be subject to denial of State reimbursement under the fiscal penalty sections referred to earlier (new Sections 153-d and 398-b) in 15 percent of the district's caseload. This percentage will drop, however, to ten percent for the fiscal year beginning April 1, 1983. Further, grounds for denial of State aid exist if a local district's preventive services expenditures violate its own assessment of needs as set forth in its district-wide child welfare services plan.

Special provisions are included in Section 153-e to permit additional reimbursement in excess of State allocations in cases of natural disaster or other emergencies. The new section also provides for procedural steps to be taken by the State Department of Social Services in acting upon applications for additional foster care funds, and for appeals, including adjudicatory hearing and judicial review, of denials of such applications.

5. Implementation.

No legislative enactment can effect a systemic redirection (in the sense that the Child Welfare Reform Act is intended) in the absence of assiduous implementation on the part of the Executive Branch. The success of the Child Welfare Reform Act, particularly, will depend to a degree unparelleled in recent legislative history upon the development of a strong partnership between the State Department of Social Services and the 58 local social services districts responsible for the delivery of child welfare services. Such a cooperative effort must recognize the basic need not only to provide prompt and efficient administrative regulation and supervision, but, more particularly, to ensure that local districts have the capacity to implement the new law intelligently.

In recognition of the need to facilitate just such an effort the Act itself establishes the new Child Welfare Standards Advisory Council as a partner with the State in the development of standards and regulations to implement various provisions of the Act noted above and to consider policy and planning issues relating to the Act's implementation.

Other specific provisions of the Act are designed to provide tools to enable the State and the localities to administer the new law effectively, including requirements for the establishment of uniform case records by social services districts, and a mandate for the State Department of Social Services to develop and implement a plan for the training of local personnel,

both public and voluntary, in casework and management skills.

In further recognition of the need for prompt and effective implementation of the Act, the legislation has specifically mandated that the State Department of Social Services "take all reasonable and necessary actions, including the provision of technical assistance to social services districts prior to the effective dates of this act, to make it fully operative on its effective dates". To this end, the sum of $150,000 is appropriated under the Act to the State Department of Social Services for "activities necessary to assure full implementation of the provisions of the Child Welfare Reform Act of 1979 on its effective date".

The Commission and other drafters of the Child Welfare Reform Act were wary of the past performance records of State agencies in implementing broad legislative delegations of authority. Consequently, in the case of this almost monumental redirection of the State's child welfare system, the Legislature manifested a clear determination not to "enact and forget". The Child Welfare Reform Act places three distinct reporting and evaluation obligations on the Executive Branch. First, the Act requires that the State Department of Social Services report to the Governor and the Legislature by January first of 1980 and 1981 on the progress made toward the implementation of the Act. (The first of these reports was submitted by the Department in December 1979.) Second, the Act further requires that the regular annual report of the Department to the Legislature regarding the delivery of

child welfare services in the State include progress made and problems encountered in the implementation of the Child Welfare Reform Act of 1979. This addition to the annual child welfare services report must also include extensive detailed data on expenditure experience and program and cost effectiveness under the Act. Third, and perhaps most significant, the Act specifically charges the Director of the Budget to contract with a non-governmental body to perform a comprehensive evaluation of the implementation and effectiveness of the Child Welfare Reform Act. This evaluation must be included in an interim report submitted by the Director of the Budget to the Governor and the Legislature on or before September 15, 1982, and in a final report submitted on or before April 1, 1985.

II. CHILD PROTECTIVE SERVICES

While New York State has, for more than a century, endeavored to provide the essentials of life and a measure of protection for children who are homeless, destitute or in need of shelter, the establishment of distinctive and appropriate procedures and public agencies for protecting children from maltreatment at the hands of their own parents or guardians is of much more recent date.

Our system of law has never, of course, explicitly sanctioned physical child abuse, but it had traditionally taken a laissez faire attitude toward disciplinary practices which may today be perceived as seriously abusive in nature.

Current societal attitudes, however, give greater weight to the status of the child as an individual with interests and rights not necessarily identical to those of the parents and therefore entitled to society's protection.

The acceptance of the new attitude toward children as individuals has been recognized by the State Legislature in a number of ways that are highly relevant to the subject of child abuse.*

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* The Social Services Law defines "abused child" as "... a child less than eighteen years of age whose parents or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, an act of sexual abuse against such child as defined in the penal law."

Child Protective Services, as a function of the State Department of Social Services, has been active for many years. In 1965, the Legislature initially mandated the reporting by various appropriate professionals of instances of suspected child abuse. More recently, in 1973, the Child Protective Services Act was passed modernizing and consolidating existing statutes aimed at protecting children and giving supervisory responsibilities to the New York State Department of Social Services. The act also mandated the creation of child protective units in each local social services district.

The Legislature recognized that, in order for the State to protect children from abuse, the public and professionals who are in regular contact with children would have to be motivated to report instances of suspected abuse or maltreatment. Therefore, the new law sets penalties for professionals who fail to report suspected cases. To encourage reports, the law provides immunity from prosecution for all persons who make reports in good faith.

Another recognized need was the collection of accurate statistics on the incidence of child abuse within the State. To fulfill this need, a child abuse reporting hotline was established to accept all reports at one toll-free number. Besides collecting data, the centralized reporting system also is intended to provide to social services districts and other authorized persons information on any previous reports on a family when a new report is made, and to track implicated families across county lines.

Upon receipt of a report either through the statewide Child Abuse Register or from a local source, child protective units must begin an investigation of the allegation within 24 hours, report back to the State on the status of the investigation within seven days, and make a finding within 90 days that the report is either "unfounded" or "indicated". Upon a finding that the report was "unfounded", the Act requires expungement of the case from State and local records. When an abuse or maltreatment case is "indicated", the local department has responsibility for protecting the child in addition to attempting to rehabilitate the abusive parent or parents and maintain the child in the home, when possible.

Besides operating the Central Register system, the State is mandated to monitor local activities, provide technical assistance to localities, conduct public awareness campaigns and training sessions for caseworkers and supervisors, and provide education for mandated reporters.

Since the Child Protective Services Act took effect in September, 1973, the number of reports of child abuse has nearly doubled from 29,912 in 1974 to 45,337 in 1978. The number of child fatalities directly attributed to child abuse and neglect decreased by nearly half when the Act was first implemented and since then has remained steady at about 75 deaths per year. By mid-December of 1979, 150 deaths were being investigated for possible child abuse and neglect. Only 48 had been confirmed by the end of November. Investigation was still under way for the rest.

New York State's Protective Services Act served as a model for the federal government's 1974 Child Abuse Prevention and Treatment Act. Many of the provisions adopted by the State, such as a centralized registration of cases, immunity for persons reporting in good faith, prompt investigation of reports, and confidentiality of case records were made requirements for eligibility for financial assistance under the federal Act.

Working within these mandates, the State and local social services districts have now had nearly seven years in which to implement the Child Protective Services Act. Any public system needs periodic review in order to assure that it is functioning effectively and that legislative intent is being fulfilled. There has been persistent criticism of the implementation of this law at the State and local levels from a number of sources including school officials, several county grand juries which have examined their local systems, and from members of the public who have either made reports or been the subjects of reports.

The Commission currently is reviewing key elements in the system to determine whether they present barriers to effective protection of children under the Act. Issues of study include the role of the State Department of Social Services and use of the Central Register system; the duties and qualifications of child protective workers; the role of Societies for the Prevention of Cruelty to Children; provision of support services to prevent abuse and maltreatment and to rehabilitate families where abuse and maltreatment have occurred; and the special problems related to services to families and child victims when sexual abuse occurs.

A. Role of the State Department of Social Services

Because of the crisis orientation of the local social services districts which must respond to often urgent reports of children in need of protection, the State must assume an extremely important role in providing oversight and leadership in child protection. The State must set policy, interpret legislative intent through regulations, and review local procedures as well as actual local response to reports to assure that they adequately reflect the intent of the regulations. Further, the State has a significant role in providing technical assistance, particularly when extremely difficult or sensitive situations arise, and child protective workers need immediate access not only to their own supervisors, but often to experienced outside advisors to assist in decision making.

The Commission is presently documenting the State's response to county needs on these and other questions as well as examining the State's leadership role.

B. Status of Child Protective Workers

The actual implementation of a major portion of the Child Protective Services Act rests with workers and supervisors at the local level. Their duties demand a high degree of professionalism. The success of the protective system is directly dependent upon the abilities of these individuals. Therefore, the current study includes an extensive review of the way protective workers are selected, the personal qualities and aptitudes which enable workers to be most effective, the working conditions which are conducive to effective casework, promotional opportunities, and training.

C. Role of Societies for the Prevention of Cruelty to Children

Although local social services districts have assumed the major role in protecting children, that responsibility traditionally fell to Societies for the Prevention of Cruelty to Children. These voluntary organizations developed during the late 19th century when there was no public system available. When government assumed a child protection function, the number of active Societies in New York State dwindled until there are now about a dozen, with considerable variations in the kinds of services they provide. The 1973 Act named Societies for the Prevention of Cruelty to Children, along with public agencies, as having the duty to protect children. Duly authorized agents of the Societies may perform most of the duties of publicly-employed protective workers, including taking protective custody of children. In addition, under the law they are peace officers and have the right to carry guns.

In some areas, Societies function primarily as service providers, operating group homes, homemaker services, and handling certain categories of abuse and neglect cases under contract with the local department of social services. In other areas, they directly accept and investigate reports of child abuse and neglect.

The Commission is currently reviewing all statutes pertaining to these Societies and studying their various functions.

D. Provision of Services

Services to abusive families to prevent recurrences and allow children to live safely in their own homes are clearly the

key to a successful child protective system. Although the 1973 Act mandates that services to rehabilitate abusive families must be provided without regard to the income eligibility of the family, it permits considerable latitude as to the nature, scope, and circumstances for the delivery of services to children and families. As a result, there is a tremendous variation across the State in the types of services available to provide assistance where it is needed.

Through voluntary action, concerned laymen and professionals in many communities are already involved in trying to assure that child protection means not only removing a child from a dangerous situation, but also helping parents to modify their own behavior so that a safe environment will be created for their children. Former abusers and their families have also contributed significantly to the rehabilitation of child abusers and their victims through such self-help groups as Parents Anonymous and Families Anonymous. In more than three-fourths of New York State's counties there are active Child Abuse and Neglect Task Forces made up of concerned citizens, businessmen, and professional child care workers.

The Commission will review and evaluate the various existing systems in an attempt to encourage the best use of the most effective services and increase dissemination of information about proven methods of treatment. Service funding mechanisms will also be reviewed to determine if financial barriers to providing services can be lowered.

E. Services to Child Victims of Sexual Abuse

Although child protective services have broadened in the past few years, one group that was often overlooked includes children who are victims of incest and other types of sexual abuse. The legal definitions of child abuse and maltreatment clearly include children who are victims of sexual abuse within the family setting. Just as society's attitude toward protecting children from physical abuse and maltreatment has gradually changed, so has its willingness to confront the problem and provide protection for children who are forced into sexual contact with their parents or others. The recognition of this problem has led to an increased incidence of sexual abuse reporting and to the necessity of providing specialized services to the victims and their families.

The Commission will attempt to document whether existing statutes on sexual abuse serve children's best interests and will evaluate the appropriateness and adequacy of services provided to assist these children.

III. ALCOHOLISM AND CHILD WELFARE

The disease of alcoholism has been estimated to affect approximately ten million Americans directly and, indirectly, an estimated forty million others who are members of their families. Alcoholism is often referred to as a family disease. Children of alcoholics, whether through heredity or learned behavior, are at greater risk of becoming alcoholics than the children of nonalcoholics. The recovery of an alcoholic is more difficult without the support and cooperation of family members, and the presence of an active alcoholic in a family often results in irrational and self-destructive family behavior.

For children, poor academic performance, emotional and behavior problems and strained relationships may often be caused by the presence of an active alcoholic in the home. In other instances, children of alcoholics may precociously assume roles of greater family responsibility. Although they may appear to have adjusted, studies indicate that, as adults, they may develop feelings of depression, difficulty in expressing emotions, or other mental health problems.

The plight of some other children, however, is even more alarming. Researchers and experts in the field of alcoholism and child abuse and neglect have recently directed attention toward links between child abuse or neglect and alcoholism. While estimates vary, it has long been clear that alcohol is a major factor in a large percentage of child abuse and neglect cases.

While there is no basis for a belief that alcoholic persons are by nature more prone to abusive or neglectful practices than the general population, the relationship between alcoholism and child abuse and neglect is thought to lie in its effects on the alcoholic's self-restraint and self-discipline. For this reason, it is the Commission's hypothesis that the establishment of effective links between the treatment of child abuse and neglect and agencies involved in the detection and treatment of alcoholism will be particularly and doubly beneficial.

The Commission will conduct a study which will examine the response of social agencies and institutions to the needs of alcoholic families. The study will assess the ability of child welfare agencies to identify the needs of children of alcoholics, particularly children who may be abused or neglected. It will be designed to examine not only the resources available to serve alcoholics and their families, but the extent of administrative and treatment coordination among all agencies and institutions involved with the family.

The Commission intends to interview staff from a variety of agencies in a sample of counties in New York State. In addition, a minimum of 100 child welfare cases will be reviewed and discussed with the assigned caseworkers and in some instances, with staff of other agencies serving the family.

Upon completion of the study, the Commission will offer recommendations and strategies to improve the identification of alcoholics and their families, the services available to meet their needs and coordination among the array of agencies and institutions involved.

IV. SUBCOMMITTEE ON JUVENILE JUSTICE

While the major focus of the Subcommittee has been on developing legislation in the area of juvenile justice, it has undertaken several complementary projects designed to deal with juvenile problems.

A. Hearing on Disruptive Youth

Senator Halperin, Chairman of the Subcommittee, found that while the Legislature had devoted a great deal of attention to teenage murders and muggers, not enough attention had been paid to juveniles who commit less serious crimes.

The problem manifested itself in many urban areas where menacing bands of tough youths were terrorizing senior citizens, vandalizing businesses and homes and creating a public nuisance. In December, 1978, a Commission hearing was held in a middle class community in Brooklyn where testimony was heard from Family Court officials, educators, police officials, community groups, senior citizens and the youth themselves.

B. Legislation

Several bills pertaining to juvenile justice, introduced at the request of The Temporary State Commission on Child Welfare, were enacted into law during recent Legislative Sessions. They are:

Laws of 1977

Description	Chapter	Print
Eliminates ambiguities in the Juvenile Justice Reform Act of 1976 by making technical corrections.	204	S.717-A
Establishes the county attorney or corporation counsel as the appropriate official to approve juvenile delinquency petitions. The county attorney or corporation counsel may, under the provisions of this bill, decline to approve a petition with good cause shown in writing.	906	S.4017-C A.6372-C
Clarifies and revises procedures under the Juvenile Justice Reform Act of 1976	28	S.4280
Provides for stricter criteria when a child is released or discharged from schools or centers of the Division for Youth.	697	S.4538-A
Clarifies the law prohibiting the discharge of youth who have absconded from care while in the custody of the Division for Youth, but placed in a Mental Hygiene facility.	398	S.5856

Laws of 1978

Description	Chapter	Print
Extends age for admission to DFY facility from under seventeen to under eighteen.	549	S.7420 A.9639
Clarifies role of district attorney in presenting juvenile delinquency petitions.	512	S.8330 A.10897
States conditions necessary if a respondent in a juvenile delinquency or Person In Need of Supervision proceeding wishes to waive counsel.	513	S.9672-B
Restricts granting of home visits during period of secure confinement at a Division for Youth facility.	510	S.10307

The Juvenile Justice Reform Amendments (Chapter 478 of the Laws of 1978), incorporated the Commission's recommendations to broaden the Juvenile Justice Reform Act to include 13-year-olds, to expand the definition of Designated Felony Act to embrace more crimes, and to require approval of the corporation counsel or county attorney before adjusting cases where the potential respondent has had a prior adjustment.

During the 1979 Legislative Session an Incompetency Bill (an Act to amend the Family Court Act and the Mental Hygiene Law in relation to the capacity of juveniles to participate in certain procedure) and a School Trespass Bill (an Act to amend the Penal Law and the Education Law, in relation to unauthorized presence on school grounds) were enacted into law.

The Incompetency Law, Chapter 531 of the Laws of 1979, was first introduced in the 1978 session. It passed the Senate but failed to pass the Assembly and was reintroduced in the 1979 Legislative session. This Law amends the Family Court Act and the Mental Hygiene Law by providing a procedure for the examination and treatment of juveniles accused of a delinquent act who appear to lack the capacity to understand the proceedings or to assist in their own defense. Specifically, the law defines incapacity and requires the court to order an examination and hold a hearing to determine whether the juvenile respondent falls within the definition. If a juvenile is found to be incapacitated, the court may commit him to the custody of the Commissioner of Mental Health or the Commissioner of Mental Retardation and Developmental Disabilities for an initial period not to exceed one year. The Commissioner may, if necessary, apply for a temporary extension of the commitment

order; or, if recovery is unlikely, the Commissioner may apply for dismissal of the petition. The law provides for frequent review to ensure that the juvenile does not remain in the Commissioner's custody longer than necessary. The Mental Hygiene Law amendments require the appropriate Commissioner to accept custody and to place the juvenile in an appropriate facility or program under his jurisdiction.

These procedures give a mentally disabled juvenile respondent the same protection that an adult criminal defendant receives under the Criminal Procedure Law. Prior to this law, the Family Court was forced to improvise when confronted with apparently incapacitated juveniles charged with delinquent acts. As a result, juveniles had been sent to temporary care facilities for a 30-day diagnostic workup and had remained there for almost a year while the family court sought admittance to an appropriate mental health facility.

In Peo. ex rel Thorpe v. Clark 62 AD 2d 183 (1979) the court held that the Family Court has the power to admit a juvenile to the Department of Mental Hygiene prior to adjudication if the juvenile is found to be incompetent to defend himself in such proceeding, if the power is exercised in a manner consistent with the juvenile's right to due process. The court viewed the lack of such a proceeding in the Family Court Act as a "legislative oversight". This Law remedies this oversight.

The School Trespass Law, Chapter 698 of the Laws of 1979, was first introduced at the request of the Commission in 1977. In its original form the bill passed the Senate in 1977, but was defeated on the Assembly floor. The 1979 version amends the Penal Law to provide that persons who enter or remain in a school building without written permission or specific reason for being there may be charged with a commission of a class B misdemeanor. The prior law categorized this behavior merely as a violation. Since a violation is not a crime, the Family Court did not have jurisdiction over juveniles accused of committing this act. Further, most school trespassers are juveniles and the old statute was practically unenforceable.

By classifying unauthorized presence as a misdemeanor, this legislation serves as a preventive measure. No longer will authorities have to wait until an intruder commits an offense before being subject to criminal penalties.

C. Reception Center

The Subcommittee on Youth Violence of the Senate Committee on Social Services, chaired by Senator Pisani, and Family Court Judges from around the State have pointed out the need for a reception center for juvenile delinquents who are placed with the Division for Youth, but who remain in local detention centers for long periods of time while awaiting transfer to a DFY facility.

Senator Halperin met with Frank Hall, Director of the Division for Youth, in the summer of 1979 to discuss this situation.

Mr. Hall has since submitted a proposal to the Governor's office for a Diagnostic Center within the Division for Youth. This center would serve multi-problem youth who require specialized assessment beyond the capacity of the average DFY youth service team, and must be evaluated in a residential setting to determine the most appropriate program for them.

While the Subcommittee favors this proposal, it believes that it should include a provision for a reception center for juveniles who have been adjudicated delinquent and ordered placed with the Division for Youth but for whom a bed is not available. Although such juveniles may not need additional diagnostic services, the center would prepare them for placement. This would prevent juveniles from spending idle time in detention centers, being placed in an unsuitable facility or being left unsupervised in the community.

D. Juvenile Delinquency Code

Juvenile delinquency proceedings in our State have gone through many changes since the establishment of the Family Court system in 1962. At that time, juvenile delinquency proceedings were considered purely civil, and civil procedure law was applied almost exclusively. This approach reflected the view that the Family Court was a non-adversarial tribunal designed to resolve problems in an informal judicial setting.

During the past seventeen years, however, many constitutional procedural and evidentiary rights traditionally reserved for adult criminal proceedings have been made applicable to juvenile delinquency cases. In the landmark Supreme Court decision, In re Gault 307 U.S. 1 (1967), the court held that the due process provisions of the Fourteenth Amendment are applicable to juveniles accused of acts which, if committed by adults, would be crimes. Under Gault,

a juvenile has the right to formal notice of charges, to counsel, confrontation and cross-examination of witnesses, the privilege against self-incrimination, the right to receive a transcript of the proceedings and the right to appellate review. Juvenile due process rights were further extended in 1970 when the Supreme Court held that any finding that a juvenile committed an act which would consititute a crime if committed by an adult must be based upon proof beyond a reasonable doubt. In re Winship 397 U.S. 358.

Widespread litigation followed these two decisions, and the courts in New York State selectively applied criminal statutes and cases to the delinquency proceeding. The result has been an amalgam of uncodified criminal and civil rules and a labyrinth of often conflicting judicial holdings. Further, although the juvenile delinquency proceeding is deemed to be quasi-criminal in nature, Matter of Gregory W. 19 NY 2d 55 (1966), Matter of Edgar L. 66 Misc 2d 142 (1971), the Court of Appeals held that the Family Court is not governed by the Code of Criminal Procedure (now the Criminal Procedure Law), Matter of Daniel D. 27 NY 2d 90 (1970). Conflicting rules apply from county to county - and even from courtroom to courtroom within the same county. This uncertainty causes confusion among practitioners and denies the parties a basic standard of justice. The Commission's Subcommittee on Juvenile Justice addressed this serious problem by calling for a clarification and revision of the Family Court Act as it pertains to Juvenile Delinquency proceedings.

The Subcommittee undertook this mission in August, 1977 with the formation of an advisory panel consisting of legal scholars, members of the judiciary and practicing attorneys. The panel analyzed case law and evaluated all relevant sections of the Family Court Act, the Criminal Procedure Law and the Civil Practice Law and Rules, and in July, 1978, the Subcommittee completed a draft Juvenile Delinquency Procedure Code.

To obtain comment on the proposed Code from interested organizations, agencies and individuals, the Subcommittee held public hearings in Albany, New York City, and Rochester during 1978, requested written comments from those unable to testify, and met with members of the Family Court Judges Association and the Family Court Rules and Advisory Committee. Many of their suggestions are incorporated in the proposed Act, which has been introduced at the request of the Commission (Senate Bill 7611, Assembly Bill 9000).

The new article is intended as a replacement for the present Family Court Act's Article Seven as it pertains to delinquency actions. Article Seven would continue to govern PINS, and the present Article Eight, which applies to family offenses, would be renumbered Article Three.

The proposed Juvenile Delinquency Article does not alter the basic delinquency definitions and adjudicatory procedures. The definition of delinquency, the availability of specific dispositional alternatives and the requirements that a juvenile must be found to have committed a crime and also be in need of supervision, treatment or confinement are unchanged. Similarly, the procedures and disposition for designated felony and juvenile offender cases are not

amended. Recent legislation, including statutes on incompetency proceedings, discovery procedures, juvenile offender provisions, is incorporated in the new article.

The article also embodies significant procedural amendments involving pre-court practices, preliminary hearings, discovery and post-dispositional procedures. Sections relating to detention, initial appearance, probable cause hearings and the fact-finding and dispositional hearings are clarified and made an integral part of a more clearly delineated process. Each phase of a delinquency action is defined and the article encourages a speedy and efficient adjudication.

The article also details the responsibilities of the probation department, the law guardians and "presentment agency" (the corporation counsel, county attorney or district attorney prosecuting the case). The prosecutorial authorities are granted increased authority, reflecting the increased adversarial nature of delinquency proceedings.

The proposed Article is drafted with the intent to enable a practitioner to quickly ascertain the procedures in a delinquency action,while at the same time assuring the delivery of swift and certain justice in a Family Court juvenile delinquency proceeding.

It is hoped that appropriate public discussion of this significant legislation will ensue and ultimately lead to the enactment of a comprehensive and unified juvenile delinquency procedural and evidentiary code.

CHAPTER 610, LAWS OF 1979

STATE OF NEW YORK

S. 6222—A

A. 8147—A

R. R. 186

1979-1980 Regular Sessions

SENATE–ASSEMBLY

May 31, 1979

IN SENATE—Introduced by Sens. PISANI, SMITH, HALPERIN—(at request of the Temporary State Commission on Child Welfare and the Temporary State Commission to revise the Social Services Law)—read twice and ordered printed, and when printed to be committed to the Committee on Social Services—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by M. of A. LASHER, FINK, KREMER, SANDERS, VANN—Multi-Sponsored by—M. of A. BARBARO, BIANCHI, BUSH, CONNELLY, CONNERS, CONNOR, COOKE, D'AMARIE, DelTORO, ENGEL, GOLDSTEIN, GORSKI, GOTTFRIED, GRABER, HARENBERG, HEVESI, HINCHEY, HOBLOCK, HOCHBRUECKNER, HOYT, JACOBS, JENKINS, KISOR, KOPPELL, LENTOL, LEVY, LEWIS, LIPSCHUTZ, McCABE, G. W. MILLER, NEWBURGER, NINE, ORAZIO, PASSANNANTE, PESCE, PILLITTERE, RETTALIATA, ROBLES, ROSS, SCHIMMINGER, SIEGEL, SILVER, STAVISKY, TALLON, D. B. WALSH, WEINSTEIN, WINNER, YEVOLI—read once and referred to the Committee on Child Care—passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the social services law, in relation to the provision of preventive services for children and their families and reimbursement of expenditures made therefor, and the administration and funding of child welfare services, and to repeal paragraph (m) of subdivision six of section three hundred ninety-eight of such law relating to the provision of preventive services and subdivision five of section three hundred seventy-two-c of such law relating to the state-wide adoption service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act together with a chapter of the laws of nineteen hundred seventy-nine entitled "AN ACT to amend the social services law, in relation to the administration and funding of child welfare services; amending chapter fifty-three of the laws of nineteen hundred seventy-nine relating to the local

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD9-25-921A

assistance budget, in relation to additional funding for preventive services; and making an appropriation to the department of social services to assure full implementation of the child welfare reform act of 1979", shall be known and may be cited as "the child welfare reform act of 1979".

§ 2. Article six of the social services law is amended by adding a new title four to read as follows:

TITLE 4

PREVENTIVE SERVICES FOR CHILDREN AND THEIR FAMILIES

Section 409. Preventive services; definition.

409-a. Preventive services; provision by social services officials.

409-b. Preventive services; reimbursement.

§ 409. Preventive services; definition. As used in this title, "preventive services" shall mean supportive and rehabilitative services provided, in accordance with the provisions of this title and regulations of the department, to children and their families for the purpose of: averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care.

§ 409-a. Preventive services; provision by social services officials. 1. (a) A social services official shall provide preventive services to a child and his family, in accordance with the child's service plan as required by section four hundred nine-e of this chapter and the social services district's child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter, upon a finding by such official that the child will be placed or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services the child will be able to remain with or be returned to his family. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter.

(b) When a child and his family have received preventive services for a period of six months pursuant to this subdivision, the social services official shall continue to provide such services only upon making a new finding that the child will be placed or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services, the child will be able to remain with or be returned to his family. Such new finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter.

2. A social services official is authorized to provide preventive services to a child and his family to accomplish the purposes set forth in section four hundred nine of this chapter, when such services are not required to be provided pursuant to subdivision one of this section.

3. Preventive services may be provided directly by the social services official or through purchase of service, in accordance with regulations of the department.

4. Regulations of the department, promulgated pursuant to and not inconsistent with this section, shall contain program standards including, but not limited to: specification of services to be classified as preventive services; appropriate circumstances and conditions for the provision of particular services; appropriate providers and recipients of such services; and time limits, as may be appropriate, for the provision of particular services. The department shall, subject to the approval of the director of the budget, establish reimbursement or charge limitations for particular services or groups of services to be provided. The department shall also promulgate regulations to prevent social services districts from overutilizing particular forms or types of preventive services and to encourage districts to provide balanced preventive services programs based on the identified needs of children and families residing in such districts.

The program standards promulgated pursuant to this subdivision shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations, including the state council on children and families.

5. In accordance with regulations of the department, where the child's family is able to pay all or part of the cost of such services, payments of such fees as may be reasonable or other third party reimbursement as may be available in the light of such ability shall be required. Expenditures subject to reimbursement pursuant to section four hundred nine-b of this title shall be reduced by the sum of all fees received or to be received pursuant to this subdivision.

§ 409-b. Preventive services; reimbursement. 1. Expenditures made by social services officials for preventive services pursuant to the provisions of this title and in accordance with the social services district's child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter, and consistent with procedural requirements for such services pursuant to title XX of the federal social security act, shall be subject to reimbursement by the state, in accordance with regulations of the department, as follows: there shall be paid to each social services district: (a) seventy-five per centum of allowable expenditures for preventive services provided pursuant to subdivision one of section four hundred nine-a of this title, provided, however, that the district's share of the cost of preventive services shall not be met in whole or in part by in-kind or indirect services nor by non-tax levy funds, including but not limited to privately donated funds, in an amount exceeding one-half of the district's share of such cost; and provided, further, that such restriction on the extent to which a district's share of the cost of preventive services may be met by privately donated funds shall not apply to an amount equal to such district's total preventive services expenditures, the local share of which was met by privately donated funds, and subject to state reimbursement during the state fiscal year ending March thirty-first, nineteen hundred eighty-one, pursuant to that portion of the department's local assistance budget for such fiscal year applicable solely to expenditures for preventive services; and (b) fifty per centum of allowable expenditures for preventive services provided pursuant to subdivision two of section four hundred nine-a of this title; provided, however, that the total amount of reimbursement to social services districts pursuant to this paragraph (b) shall be limited to the amount of the annual appropriation therefor made by the legislature.

2. Claims for state reimbursement shall be made and state reimbursement shall be paid in accordance with the procedures set forth in subdivisions six and seven of section one hundred fifty-three of this chapter.

3. Reimbursement under the provisions of this section shall not be available with respect to any services for which state aid or reimbursement may be paid pursuant to the provisions of any other law outside the provisions of this chapter.

4. Notwithstanding any provisions of this chapter to the contrary, reimbursement under this section shall be available with respect to any services aidable and funded by the federal and state governments pursuant to titles four-A, nineteen, twenty or other provisions of the Federal Social Security Act only to the extent that such district has exhausted its entitlement to or is ineligible for funds appropriated or apportioned for such services.

5. Notwithstanding the provisions of subdivision one of this section, reimbursement for preventive services pursuant to such subdivision shall be available only with respect to expenditures for preventive services by such district which are in excess of an amount established by department regulation representing the amount claimed by such district and identified by the department as claims for preventive services under any other funding source during the fiscal year ending march thirty-first, nineteen hundred seventy-nine; provided, however, that such amount shall be no less than an

amount which bears the same proportion to such district's allocation of funds appropriated pursuant to title XX of the federal social security act for the state fiscal year in which such claim is made, as such district's claims for expenditures for preventive services pursuant to such title XX during the state fiscal year ending March thirty-first, nineteen hundred seventy-nine bears to such district's allocation of funds appropriated pursuant to such title XX for such fiscal year.

§ 3. Such law is amended by adding a new section one hundred fifty-three-e to read as follows:

§ 153-e. Special provisions for state reimbursement of foster care expenditures. 1. Notwithstanding the provisions of this chapter or of any other law to the contrary, expenditures by social services districts for the care and maintenance of children outside their own homes shall be subject to reimbursement by the state pursuant to section one hundred fifty-three of this chapter only to the extent of the annual appropriations therefor. The moneys so appropriated and any federal funds received or to be received for the furnishing of such care and maintenance shall be apportioned among the social services districts by the department which, in making such apportionment, shall consider such factors as: each district's child welfare services plan submitted pursuant to section four hundred nine-d of this chapter; previous foster care expenditures by the districts; denial of reimbursement to districts pursuant to sections one hundred fifty-three-d and three hundred ninety-eight-b of this chapter; district population characteristics and caseload trends, and unusual circumstances affecting particular districts. Such apportionment shall be subject to the approval of the director of the budget; provided, however, that a social services district is entitled to apply for and receive reimbursement by the state for expenditures for care and maintenance of a child outside his own home beyond the amount apportioned to such district pursuant to this subdivision, unless it is determined by the department, with the approval of the director of the budget, that at least fifteen percentum, or at least ten percentum for state fiscal years commencing on and after April first, nineteen hundred eighty-three, of the children cared for by such district outside their own homes have been provided care in such manner as would be subject to denial of state reimbursement pursuant to the provisions of section one hundred fifty-three-d or section three hundred ninety-eight-b of this chapter or that expenditures by such district for preventive services are in substantial non-compliance with the district's own assessment of its projected program and fiscal requirements in meeting identified needs, as set forth in its districtwide child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter; provided, however, an application by a social services district for additional reimbursement pursuant to this section shall be approved by the department when the need for such additional reimbursement arises out of a natural disaster or other emergency, extraordinary or unforeseen circumstance having a substantial impact upon the district. Approvals of applications pursuant to this proviso shall be limited to reimbursement for expenditures for a period not exceeding ninety days. An application submitted pursuant to this subdivision by a social services district for reimbursement beyond the amount apportioned to such district shall state the factors occasioning and justifying the need therefor.

2. Within thirty days of receipt of the application of a district pursuant to subdivision one of this section, the department shall review the application and all readily available data and information pertaining thereto, including but not limited to, data compiled and maintained by the state child care review service and any information which may have been acquired within the last year as the result of a review made by the department pursuant to section three hundred ninety-eight-b of this chapter, and the department shall approve or deny the district's application if such data and information afford a basis therefor. If the department has not conducted a review pursuant to section three hundred ninety-eight-b of this chapter within the last year and the district is not otherwise found to be in violation of the

provisions of section one hundred fifty-three-d of this chapter to such extent as would afford a basis for denial of the application, the department shall grant interim approval of the application pending the conduct of a review pursuant to such section three hundred ninety-eight-b which the department shall complete within one hundred twenty days from the date the application was received. Upon completion of and on the basis of the findings of such review the department shall finally approve or deny the application.

3. A determination by the department denying additional reimbursement to a social services district pursuant to subdivision two of this section shall be made after an adjudicatory hearing in accordance with article three of the state administrative procedure act. Such determination shall be subject to judicial review in accordance with the provisions of article seventy-eight of the civil practice law and rules.

4. When the department approves an application for additional reimbursement pursuant to subdivision two of this section, the commissioner shall certify to the department of audit and control that the department has reviewed the district's case records and other relevant data and information, and that the percentum of the district's foster care caseload not in compliance with sections one hundred fifty-three-d and three hundred ninety-eight-b of this chapter does not exceed the percentum permitted by this section. The commissioner shall forward copies of such certification to the director of the budget and to the chairmen of the senate finance and assembly ways and means committees.

§ 4. Subdivision one of section three hundred fifty-eight-a of such law, as amended by chapter seventy-eight of the laws of nineteen hundred seventy-eight, is amended to read as follows:

(1) Initiation of judicial proceeding. A social services official who accepts or proposes to accept the custody and guardianship of a child by means of an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, or the care and custody of a child as a public charge by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, and the division for youth which accepts or proposes to accept a child for placement in one of its facilities by means of an instrument pursuant to section five hundred two of the executive law, shall determine whether such child is likely to remain in the care of such official or division for a period in excess of thirty consecutive days. If such official or division determines that the child is likely to remain in care for a period in excess of thirty consecutive days, such official or division shall petition the family court judge of the county or city in which the social services official has his office, or in which the parent or guardian of a child placed with the division resides, to approve such instrument upon a determination that the placement of the child is in the best interest of the child and that it would be contrary to the welfare of the child for him to continue in his own home. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, approval of the instrument shall only be made upon an additional determination that all of the requirements of such section have been satisfied. The social services official or division for youth shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his home, but state reimbursement to the social services district for care and maintenance provided to such child [may] *shall* be [withheld or] denied pursuant to section [three hundred fifty-eight-b and subdivisions three and four of section twenty] *one hundred fifty-three-d* of this chapter. The social services official or division for youth shall diligently pursue such proceeding. Where the care and custody of a

child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, or where the division for youth has accepted a child for placement in one of its facilities by means of an instrument pursuant to section five hundred two of the executive law, for a period of thirty days or less or for an indeterminate period which such official or division deems unlikely to exceed thirty days, and thereafter such official or division determines that such child will remain in his or its care and custody for a period in excess of thirty days, such official or division shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter or section five hundred two of the executive law, as may be appropriate, and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer of his care and custody to the social services official shall be subject to state reimbursement, *notwithstanding the provisions of section one hundred fifty-three-d of this chapter.*

§ 5. Section three hundred fifty-eight-b of such law, as amended by chapter seven hundred ten of the laws of nineteen hundred seventy-five, is amended to read as follows:

§ 358-b. Limitations on state reimbursement for foster care. [The provisions of subdivisions three and four of section twenty of this chapter shall be applicable to state reimbursement for expenditures for the care and maintenance of dependent children placed in foster care on and after September first, nineteen hundred seventy-three, pursuant to the provisions of section three hundred fifty-eight-a of this chapter.] In the event that a petition for approval of an instrument and the transfer of the custody and guardianship or care and custody of a child is filed within thirty days following removal of the child from his home and diligently pursued pursuant to section three hundred fifty-eight-a of this chapter, state reimbursement shall not be [withheld or] denied *pursuant to section one hundred fifty-three-d of this chapter,* for expenditures made by a social services district for the care and maintenance of such a child away from his home prior to denial of such petition by a family court judge solely by reason of such denial.

§ 6. Subdivision five of section three hundred seventy-two-c of such law, as amended by chapter eight hundred thirty-six of the laws of nineteen hundred seventy-six, is **repealed.**

§ 7. Such law is amended by adding a new section three hundred eighty-seven to read as follows:

§ 387. Public foster care funds; ineligibility. 1. The department shall, by regulation, promulgate standards to determine that an authorized agency, or one or more of its programs or facilities, is ineligible to receive public foster care funds. Such standards shall include the following:

(a) lack of public need, including but not limited to geographic or programmatic need, for the agency or one or more of its programs or facilities;

(b) failure of the agency to promote the placement of children in permanent family homes through return to the children's own families or through adoption, or other appropriate objectives for children, as measured by such factors as length of stay in foster care for children with similar personal and family characteristics; and

(c) a pattern or practice of repeated violation of the provisions of this chapter or of the regulations of the department promulgated thereunder which have occasioned the denial of reimbursement pursuant to section one hundred fifty-three-d or three hundred ninety-eight-b of this chapter.

Such standards shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations including the state council on children and families.

2. A determination of ineligibility to receive public foster care funds shall be made upon a finding of substantial noncompliance with one or more of the standards developed and adopted pursuant to subdivision one of this section. Such findings and determination shall be made in accordance with the hearing procedures set forth in section four hundred sixty-d of this chapter relating to the revocation, suspension or limiting of operating certificates. Such determination shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

3. A determination of ineligibility to receive public foster care funds shall specify whether it applies to the agency generally or to a particular program or facility of the agency.

4. A social services official shall not purchase foster care from any authorized agency, or program or facility thereof, which has been determined to be ineligible to receive public foster care funds in accordance with the provisions of this section. Any contract between a social services district and an authorized agency shall be deemed null and void to the extent that it is inconsistent with the provisions of this subdivision.

5. The commissioner shall report forthwith in writing, to the governor, the temporary president of the senate and the speaker of the assembly with respect to each case in which a determination of ineligibility to receive public foster care funds has been made pursuant to this section. Such report shall contain the name of the agency and the reason or reasons for the determination of ineligibility.

§ 8. Paragraph (m) of subdivision six of section three hundred ninety-eight of such law is **repealed.**

§ 9. Such law is amended by adding a new section one hundred fifty-three-d to read as follows:

§ 153-d. Additional limitations on reimbursement for foster care and preventive services. 1. Expenditures by a social services district for the care and maintenance of a child outside his own home, and the administration thereof, or for preventive services, as defined in section four hundred nine of this chapter, and the administration thereof, shall not be subject to reimbursement by the state, pursuant to section one hundred fifty-three or four hundred nine-b of this chapter, when: (a) the child's foster care status has not been the subject of a timely petition in accordance with the requirements of section three hundred ninety-two of this chapter, or an order made pursuant to subdivision seven, eight or nine of section three hundred ninety-two has not been implemented within the time fixed in such order for compliance therewith; or

(b) the district has failed to comply with the provisions of section four hundred nine-e of this chapter or the regulations of the department promulgated thereunder; or

(c) the district has failed to refer the child to the statewide adoption service in accordance with the requirements of section three hundred seventy-two-c of this chapter; or

(d) the district has failed to comply with an order of the court made pursuant to subdivision (c) or (d) of section one thousand fifty-five of the family court act; or

(e) the child has been continued in the care of an authorized agency in violation of the provisions of subdivision two of section three hundred eighty-four-a of this chapter; or

(f) the instrument by which the child was placed in foster care has not been the subject of a timely petition for judicial approval pursuant to the provisions of section three hundred fifty-eight-a of this chapter.

2. (a) The department shall not deny state reimbursement to a social services district for the provision of foster care or preventive services for a child, pursuant to the provisions of this section, until written notice is given to the commissioner of the social services district affected and to the other authorized agency, the chairman or president of its board of directors and its chief executive officer, if any, which agency may be providing foster care or preventive services for the child on behalf of such district.

(b) Expenditures shall continue to be ineligible for reimbursement pursuant to subdivision one of this section until such time as the district complies with the statutory requirements and regulations set forth in subdivision one of this section; provided, however, that upon compliance by the district with such statutory requirements and regulations, such district shall not be entitled to state reimbursement for foster care or preventive services for any period prior to the date the district so complied.

3. A determination by the department denying reimbursement to a social services district for the provision of foster care or preventive services for a child, pursuant to the provisions of this section, shall not relieve such district, or any authorized agency from which the district has purchased foster care or preventive services, from its statutory or contractual obligations to continue to provide foster care or preventive services for the child or other children in its care.

4. (a) The department by regulation shall require all social services districts which purchase foster care or preventive services from other authorized agencies to charge any loss of reimbursement pursuant to this section to such agencies to the extent that such loss is attributable to such agencies. Every agreement by a social services district to purchase foster care or preventive services from another authorized agency shall be deemed to include the provisions of this section.

(b) Any social services district aggrieved by the denial of state reimbursement pursuant to this section and any authorized agency aggrieved by the determination of a social services district to charge loss of reimbursement pursuant to paragraph (a) of this subdivision, may appeal to the department which shall hold a fair hearing thereon in accordance with the provisions of section twenty-two of this chapter relating to fair hearings.

§ 10. Subdivision three of section four hundred forty-two of such law, as added by chapter six hundred sixty-eight of the laws of nineteen hundred seventy-six, is amended to read as follows:

3. The department is authorized to enter into agreements with any person, firm, organization or association for the whole or any part of the design or operation of the service as described in this title. Any such agreements shall specify that such person, firm, corporation or association shall safeguard the confidentiality of information received or maintained by the service, in the same manner, and will remain subject to the same confidentiality requirements, as the department. [The service shall be designed and operated so as not to conflict with or to impair or impede the child care management assistance system currently in operation with respect to those children for whom authorized agencies are providing foster care as defined in section three hundred ninety-two of this chapter, in counties comprising the city of New York and funded pursuant to provisions of this chapter.]

§ 11. Section four hundred forty-two of such law is amended by adding a new subdivision ten to read as follows:

10. The state child care review service established pursuant to this title shall design and implement a system to:

(a) monitor all financial claims made by social services districts for each child in foster care and child and family in receipt of preventive services pursuant to title four of this chapter;

(b) compile and maintain a cumulative record of information with respect to actions taken on behalf of each individual child throughout his or her length of stay in foster care or while in receipt of preventive services;

(c) compile and maintain information on actions taken by social services districts to initiate judicial proceedings as provided by sections three hundred fifty-eight-a and three hundred ninety-two of this chapter and to comply with judicial orders made pursuant to section three hundred ninety-two of this chapter or to section ten hundred fifty-five of the family court act, to refer legally free children to the state adoption service pursuant to section three hundred seventy-two-c of this chapter, and to comply with the provisions of section four hundred nine-e of this chapter and the regulations of the department promulgated thereunder; and

(d) compile and maintain comparative data for authorized agencies including, but not limited to, characteristics and numbers of children entering care and their families, admissions practices, delineated reasons for initial and continued placement or provision of preventive services, length of stay in care, length of time in receipt of preventive services, foster care reentry rates, number of children discharged to parents and relatives, rates of adoption, costs of care and preventive services and other information indicative of authorized agency performance.

§ 12. This act shall take effect on the first day of April, nineteen hundred eighty-one; except that section one hereof shall take effect immediately; except that sections ten and eleven hereof shall take effect on the ninetieth day after it shall have become a law and except that the state department of social services shall take all reasonable and necessary actions, including the provision of technical assistance to social services districts, prior to the effective dates of this act to make this act fully operative on its effective dates; and provided further that the state department of social services shall report to the governor and the legislature by January first of nineteen hundred eighty and nineteen hundred eighty-one on the progress made toward the implementation of this act.

REPEAL NOTE.—The provisions of paragraph (m) of subdivision six of section three hundred ninety-eight of the social services law, proposed to be repealed by this act, relate to the provision of preventive services. Such provisions would be replaced by the more extensive provisions to be added to the social services law by this act. The provisions of subdivision five of section three hundred seventy-two-c of the social services law, proposed to be repealed by this act, relate to the withholding of state reimbursement for foster care of a child who has not been referred to the statewide adoption service when required. Such provision would be incorporated into section one hundred fifty-three-d of the social services law, proposed to be added by this act.

CHAPTER 611, LAWS OF 1979

STATE OF NEW YORK

S. 6223-A

A. 8146-A
R. R. 185

1979-1980 Regular Sessions

SENATE-ASSEMBLY

May 31, 1979

IN SENATE—Introduced by Sens. PISANI, SMITH, HALPERIN—(at the request of The Temporary State Commission on Child Welfare and the Temporary State Commission to revise the Social Services Law)—read twice and ordered printed, and when printed to be committed to the Committee on Social Services—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by M. of A. LASHER, FINK, KREMER, SANDERS, VANN—Multi-Sponsored by—M. of A. BARBARO, BIANCHI, BUSH, CONNELLY, CONNERS, CONNOR, COOKE, DEARIE, DelTORO, ENGEL, GOLDSTEIN, GORSKI, GOTTFRIED, GRABER, HARENBERG, HEVESI, HINCHEY, HOBLOCK, HOCHBRUECKNER, HOYT, JACOBS, JENKINS, KISOR, KOPPELL, LENTOL, LEVY, LEWIS, LIPSCHUTZ, McCABE, G. W. MILLER, NEWBURGER, NINE, ORAZIO, PASSANNANTE, PESCE, PILLITTERE, RETTALIATA, ROBLES, ROSS, SCHIMMINGER, SIEGEL, SILVER, STAVISKY, TALLON, D. B. WALSH, WEINSTEIN, WINNER, YEVOLI—read once and referred to the Committee on Child Card—passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the social services law, in relation to the administration and funding of child welfare services; amending chapter fifty-three of the laws of nineteen hundred seventy-nine relating to the local assistance budget, in relation to additional funding for preventive services; and making an appropriation to the department of social services to assure full implementation of the child welfare reform act of 1979

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

SA

Section 1. Short title. This act, together with a chapter of the laws of nineteen hundred seventy-nine, entitled "AN ACT to amend the social services law, in relation to the provision of preventive services for children and their families and reimbursement of expenditures made therefor, and the administration and funding of child welfare services, and to repeal paragraph (m) of subdivision six of section three hundred ninety-eight of such law relating to the provision of preventive services and subdivision five of section three hundred seventy-two-c of such law relating to the state-wide adoption service" shall be known and may be cited as "the child welfare reform act of 1979".

§ 2. The social services law is amended by adding a new title four-A to read as follows:

TITLE 4-A

CHILD WELFARE SERVICES PLANNING AND ADMINISTRATION

Section 409-d. District-wide child welfare services plan.
409-e. Child service plan.
409-f. Uniform case recording.
409-g. Training of child welfare personnel.
409-h. Child welfare standards advisory council.

§ 409-d. District-wide child welfare services plan. 1. Each social services district shall prepare and submit to the department, in such form and manner and times as the department shall by regulation require, an annual district-wide child welfare services plan setting forth: the child welfare services needs of children and families for whom the social services district is or may be responsible; historic program and fiscal trends of the district in the level of care, maintenance and services provided to children and their families, including but not limited to expenditure trends, children and families served and costs of services provided; an assessment of projected program and fiscal requirements of the district in meeting identified needs in the next state fiscal year; and a description of the resources known to be available or likely to become available to meet those needs. As used in this section "services" shall mean and include preventive services, foster care maintenance and services, and adoption services. Such regulations shall include but need not be limited to criteria and methodology for determining child welfare services needs and the adequacy of the resources known to be available or likely to become available to meet those needs.

2. The child welfare services plan shall be developed by the district in consultation with other government agencies concerned with the welfare of children residing in the district, authorized agencies, and other concerned individuals and organizations. The plan as submitted to the department for approval and as approved by the department shall be made available to such agencies, individuals and organizations upon request.

3. (a) The department shall review the plan submitted by the social services district and may approve the plan in whole or in part; provided, however, that for any portions not approved, the commissioner, within forty-five days after submission of the plan, shall in writing to the district specify the portions not approved, the reasons for such determination, the actions required for resubmittal of such portions, and the time period for resubmittal which shall not exceed forty-five days. No portion of the plan shall be finally disapproved until the district has had at least one opportunity for resubmittal. Upon resubmittal, or if no resubmittal is made within the time specified, the commissioner may grant further extensions to the district to allow it to resubmit any unapproved portions, or may finally disapprove such portions. A final disapproval of a plan pursuant to this section shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

(b) Such plan shall not be approved unless:

(i) it complies with the provisions of this section;

(ii) it demonstrates that child welfare services included in the plan are

appropriate to meet the assessed needs of the children and families for whom the social services district is or may be responsible;

(iii) it is consistent with applicable provisions of this chapter and regulations of the department promulgated thereunder; and

(iv) it is in the format and includes such standardized information and data as may be required by the department to effectively evaluate such plans.

4. The child welfare services plan submitted pursuant to this section shall be consistent with and shall be prepared in conjunction with the social services district's component of the statewide comprehensive annual social services program plan adopted pursuant to title XX of the federal social security act, and shall also be consistent with the child protective services plan adopted pursuant to section four hundred twenty-three of this chapter, and any other planning requirements established by state or federal statute or regulation.

5. The department shall submit copies of child welfare services plans approved pursuant to this section to the director of the budget on or before the fifteenth day of October of each year.

§ 409-e. Child service plan. 1. With respect to each child who is identified by a social services district as being considered for placement in foster care as defined in section three hundred ninety-two of this chapter, and each child placed in such care by a social services district, such district, within thirty days from the date of such identification or of such placement, whichever occurs first, shall perform an assessment of the child and his family circumstances, in accordance with such uniform procedures and criteria as the department shall by regulation prescribe. Such assessment shall include the following:

(a) a statement of the specific immediate problems which appear to require some intervention by the social services officials;

(b) a description of the long term family relationships, an assessment of trends in the stability of the family unit, and of the likelihood that specific preventive services will increase family stabilization sufficiently to prevent placement or to reduce the duration of a necessary placement; and

(c) an estimate of the time period necessary to ameliorate the conditions leading to a need for placement, and a description of any immediate actions that have been taken or must be taken during or immediately after the conclusion of the assessment.

2. Upon completion of the assessment provided for in subdivision one of this section, the social services district shall in consultation with the child's parent or guardian, where appropriate, establish and maintain a child service plan based on such assessment, which shall include at least the following:

(a) time frames for periodic reassessment of the care and maintenance needs of each child and the manner in which such reassessments are to be accomplished;

(b) short term, intermediate and long range goals for the child and family and actions planned to meet the need of the child and family and each goal;

(c) identification of the services required by the child and his family, and a description of the availability of such services and the manner in which they are to be provided;

(d) any alternative plans for services where specific services are not available, and any viable options for services considered during the planning process;

(e) where placement in foster care is determined necessary, specification of the reasons for such determination, the kind and level of placement, any available placement alternatives, an estimate of the anticipated duration of placement, and plan for termination of services under appropriate circumstances.

3. The plan shall be reviewed and revised, in consultation with the child's parent or guardian, where appropriate, at least within the first ninety days following its preparation and at least every six months thereafter. Such revisions shall indicate the types, dates and sources of services that have actually been provided and an

evaluation of the efficacy of such services, and any necessary or desirable revisions in goals or planned services.

§ 409-f. Uniform case recording. With respect to each child described in subdivision one of section four hundred nine-e of this title, the social services district shall establish and maintain a uniform case record, consisting of the assessment, the child service plan, descriptions of care, maintenance or services provided to such child and his family and the dates provided, essential data relating to the identification and history of such child and his family, all official documents and records of any judicial or administrative proceedings relating to the district's contact with the child and his family, and such other records as the department may by regulation require to adequately review case management by the districts. The department shall by regulation specify the format and contents of the uniform case record. Such regulation shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations, including the state council on children and families. The uniform case record shall be maintained by the district in a manner consistent with the confidential nature of such records and shall be made available in accordance with applicable provisions of law.

§ 409-g. Training of child welfare personnel. Within the amounts appropriated therefor, including all federal reimbursement received or to be received on account thereof, the department shall develop and implement a plan for the training of social services district and other authorized agency personnel, including caseworkers involved in the provision or supervision of preventive services, foster care services and adoption services. Such training shall include but need not be limited to:

1. Permanence casework: casework methodologies focused on activities designed to prevent placement in foster care or to shorten the length of stay in care for those children who can be returned home or freed for adoption;

2. Development of skills to facilitate rehabilitation or restoration of the family unit;

3. Development of knowledge and skills in legally freeing children for adoption and providing adoption services;

4. Development of knowledge and skills to prepare for court processes necessary in foster care and adoption; and

5. Development of case management skills including planning for permanence for each child.

§ 409-h. Child welfare standards advisory council. 1. There is hereby established in the department a child welfare standards advisory council. The council shall meet regularly for the purpose of assisting the department in developing program standards and regulations to be established by the department pursuant to sections three hundred eighty-seven, three hundred ninety-eight-b, four hundred nine-a and four hundred nine-f of this chapter, and for the purpose of considering policy and planning issues relating to the implementation of the child welfare reform act of 1979.

2. The council shall be appointed by the commissioner, who shall appoint one of the council's members to be its chairperson. The council shall consist of fifteen members who shall be appointed from at least the following: representatives of local social services districts; voluntary sectarian and non-sectarian child care agencies and organizations; agencies providing child welfare services; children's advocacy groups; groups concerned with the welfare of minority children; representatives of appropriate professional associations and organizations and other concerned individuals and organizations.

§ 3. Subdivision four of section three hundred seventy-two-b of such law, as

added by chapter eight hundred thirty-six of the laws of nineteen hundred seventy-six, is amended to read as follows:

4. Expenditures made by a social services district for adoption services and their administration, pursuant to the provisions of this section, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows: There shall be paid to each social services district (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) [fifty] *seventy-five* per centum of its expenditures for adoption services and their administration after first deducting therefrom any federal funds received or to be received on account thereof, and any expenditures defrayed by private contributions.

§ 4. Subdivision four of section three hundred seventy-two-c of such law, as amended by chapter eight hundred thirty-six of the laws of nineteen hundred seventy-six, is amended to read as follows:

4. Each authorized agency shall refer to the adoption service, accompanied by a photograph and description, as shall be required by departmental regulations, each child in its care who has been legally freed for adoption and who has been in foster care for the period specified in subdivision one of this section and for whom no adoptive home has been found. [The department shall establish criteria by which an agency may determine that a child need not be listed on the service.] *If the child is fourteen years or older and will not consent to his adoption, such child need not be listed on the service.* Such children's names shall be forwarded to the department by the authorized agency, with reference to the specific reason by which the child was not placed on the service. The department shall establish procedures for periodic review of the status of such children. If the department[, in accordance with the criteria it has established,] determines that adoption would be appropriate for a child not [placed] *listed* with the service, the agency shall forthwith list the child. Each authorized agency may voluntarily refer any child who has been legally freed for adoption.

§ 5. Such law is amended by adding a new section three hundred seventy-two-e to read as follows:

§ 372-e. Adoption applications; appeals. 1. An authorized agency shall keep a record of applications received from persons seeking to become adoptive parents, including all actions taken on such applications.

2. The department shall promulgate regulations setting forth standards and procedures to be followed by authorized agencies in evaluating persons who have applied to such agencies for the adoption of a child. Such regulations shall also restrict the evaluation process so as not to unnecessarily duplicate previous investigations which may have been made of the adoptive applicant in the context of a prior adoption application or an application for licensure or certification to board children.

3. Upon an authorized agency's denial of an application or upon its failure to act on such application within six months of its submission, the authorized agency shall, on such applicant's request, furnish the applicant with a written statement setting forth its reason for the denial of or its failure to act on the application.

4. Any person whose application has been denied or whose application has not been acted upon by an authorized agency within six months of its submission may request and shall be granted a hearing in accordance with the provisions of section twenty-two of this chapter relating to fair hearings.

§ 6. Subdivision three of section three hundred eighty-three of such law, as added by chapter one thousand eighty of the laws of nineteen hundred sixty-nine, the second undesignated paragraph as amended by chapter six hundred forty-six of the laws of nineteen hundred seventy-two, is amended to read as follows:

3. Any adult husband and his adult wife and any adult unmarried person, who, as foster parent or parents, have cared for a child continuously for a period of [two years] *eighteen months* or more, may apply to such authorized agency for the placement of said child with them for the purpose of adoption, and if said child is eligible for adoption, the agency shall give preference and first consideration to their application over all other applications for adoption placements. However, final determination of the propriety of said adoption of such foster child shall be within the sole discretion of the court, as otherwise provided herein.

Foster parents having had continuous care of a child, for more than [twenty-four] *eighteen* months, through an authorized agency, shall be permitted as a matter of right, as an interested party to intervene in any proceeding involving the custody of the child. Such intervention may be made anonymously or in the true name of said foster parents.

§ 7. Such law is amended by adding a new section three hundred ninety-eight-b to read as follows:

§ 398-b. Child welfare services utilization review. 1. The department, by regulation, shall promulgate standards to determine whether:

(a) the placement of a child in foster care is necessary;

(b) the type or level of foster care placement is appropriate to the child's personal and family circumstances and need for supportive and rehabilitative services;

(c) the agency providing foster care for the child is exercising or has exercised diligent efforts, where appropriate, toward the discharge from care of the child, either to his own family or to an adoptive home, and

(d) preventive services, as defined in title four of this chapter, have been provided in accordance with the provisions of such title and the regulations of the department promulgated thereunder.

Such standards shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations, including the state council on children and families.

2. Expenditures by a social services district for the care and maintenance of a child outside his own home, and the administration thereof, and for the provision of preventive services and the administration thereof, shall not be subject to reimbursement by the state, pursuant to section one hundred fifty-three or four hundred nine-b of this chapter, when the provision of such care or services violates the standards developed and adopted pursuant to subdivision one of this section.

3. A determination by the department denying reimbursement to a social services district for the provision of foster care or preventive services, pursuant to the provisions of this section, shall not relieve such district, or any agency from which the district has purchased foster care or preventive services, from its statutory or contractual obligations to continue to provide such care or services for the child or other children in its care or for the child and his family in receipt of such services.

4. (a) The department by regulation shall require all social services districts which purchase foster care or preventive services from other agencies to charge any loss of reimbursement pursuant to this section to such agencies to the extent that such loss is attributable to such agencies. Every agreement by a social services district to purchase foster care or preventive services from another agency shall be deemed to include the provisions of this section.

(b) Any social services district aggrieved by the denial of state reimbursement pursuant to this section and any agency aggrieved by the determination of a social services district to charge loss of reimbursement, pursuant to paragraph (a) of this subdivision, may appeal to the department which shall hold a fair hearing thereon in

accordance with the provisions of section twenty-two of this chapter relating to fair hearings.

5. (a) Upon the adoption of child welfare services utilization review standards in accordance with subdivision one of this section, the department shall, in accordance with generally recognized statistical sampling methods, review a sample of individual case records of children in care or in receipt of preventive services and other relevant data and information compiled or kept by the state child care review service established pursuant to section four hundred forty-two of this chapter, social services districts and the agencies from which such districts may purchase foster care or preventive services to determine whether foster care or preventive services has been provided in accordance with such standards. If the department finds, in a portion of the sampled case records, that care or services has been provided in violation of such standards, it shall deny reimbursement thereon in accordance with the provisions of this section. If the department finds that care or services have been provided in violation of such standards in a portion of the sampled case records, which portion exceeds seven and one-half per centum of the entire sample, it shall attribute that portion of the violation which exceeds seven and one-half per centum of the entire sample to that portion of the entire foster care or preventive services caseload not included in the review, as the case may be, of the district subject to state reimbursement pursuant to section one hundred fifty-three or section four hundred nine-b of this chapter, and the department shall deny reimbursement thereon in accordance with the provisions of this section. In such event the social services district may perform such audits of agency records and other reviews as may be appropriate for the purpose of determining whether such loss of reimbursement may be attributed to another agency in accordance with subdivision four of this section.

(b) The results and findings of the review undertaken pursuant to paragraph (a) of this subdivision shall be contained in a report, a copy of which shall be provided to the social services district and to the other agency, the chairman or president of its board of directors and its chief executive officer, if any, which agency may be providing foster care or preventive services for the child on behalf of such district.

6. (a) In performing the reviews required in accordance with subdivision five of this section, the department shall coordinate its activities with other state and local agencies in order to avoid or minimize duplicative, repetitive, and unnecessary reviews and inspections of programs, facilities and records.

(b) Nothing contained in this section shall be construed to supersede the duty and authority of local social services districts to supervise, monitor and audit the activities of agencies providing preventive services or care to children outside their own homes pursuant to agreements between such districts and such agencies.

(c) Nothing contained in this section shall be construed to impair, or modify the requirements of section three hundred seventy-three of this chapter, and the department shall promulgate regulations providing for all procedures reasonably necessary for the placement of children in accordance with such section.

§ 8. Subdivision five of section four hundred seven of such law, as added by chapter one thousand forty of the laws of nineteen hundred seventy-four, is amended to read as follows:

5. to prepare annually for the legislature a written evaluation report of the delivery of child welfare services in the state. Such evaluation report shall include, but need not be limited to, supervision of foster care and the agencies providing such care, information on the types of problems creating the need for foster care placements, preventive and protective services, the transfer of children in care and the reasons [therefore] *therefor*, identification of target groups not receiving adequate services, and projected plans for providing services to such groups. *Such report shall include progress made and problems encountered in the implementation of "the child welfare reform act of 1979", and*

amendments thereto. Such report shall also include aggregate expenditures; persons receiving services; cost comparisons among social services districts, among types of services and services programs, and among fiscal periods; unit costs; and cost-effectiveness of the provision of preventive services pursuant to title four of this chapter. In developing such evaluation, the department shall consult and coordinate with the board of social welfare, the division for youth, and the departments of mental hygiene, health and education.

§ 9. Paragraph (e) of subdivision three of section twenty-two of such law is relettered paragraph (f) and a new paragraph (e) is added to read as follows:

(e) Aggrieved persons, agencies or social services districts described in sections one hundred fifty-three-d, three hundred seventy-two-e and three hundred ninety-eight-b of this chapter;

§ 10. That portion of section one of chapter fifty-three of the laws of nineteen hundred seventy-nine relating to the local assistance budget entitled "Department of Social Services" is amended to read as follows:

DEPARTMENT OF SOCIAL SERVICES

For state aid to municipalities and payments to the federal government for expenditures made pursuant to the social services law and the state plan for the individual and family grant program under the federal disaster relief act of 1974. All Federal funds received pursuant to title IV-B of the Federal Social Security Act are to be used to offset State expenditures for foster care. The moneys hereby appropriated are to be available for payment of state aid heretofore accrued to municipalities for expenditures made in accordance with the following schedule.

The amount of any item or items in the following schedule, notwithstanding any other provisions of law, may be increased or decreased by no more than ten percent by interchange with any other item or items in the schedule with the approval of the director of the budget, who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee.

Notwithstanding any other provisions of law, no expenditures shall be made for any of the purposes outlined in the following schedule until a certificate of allocation has been approved by the director of the budget and copies thereof filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee ..... [1,839,595,400]
1,841,795,400

Notwithstanding [the provisions] *any inconsistent provision* of the social services law [or any other provision of law] for preventive services provided in accordance with rules and regulations of the department of social services, the state share of the cost of such services shall be *fifty percentum of the approved preventive services expenditures and shall be* limited to the appropriation herein and such amount shall constitute the complete liquidation of the state's obligation for such purposes under existing statutes for the state fiscal year beginning April first, nineteen hundred seventy-nine. [Notwithstanding any other provision of law, the] *The*

moneys hereby appropriated for the furnishing of preventive services, including $500,000 for day services programs, or the full amount of approved day services programs, whichever is less, shall be apportioned *by the department with the approval of the director of the budget* among the social services districts [or other eligible agencies having preventive services projects approved by the commissioner of social services subject to the approval of the director of the budget]. [No care or services are to] *In making such apportionment the department shall consider projected program requirements, previous preventive services and foster care expenditures and district population and caseload trends. Preventive services may* be provided [except] to children [in foster care] and their families[, or] only after a social services official has made a finding that the child will be placed in *or returned to* foster care *or continued in such care* in the absence of such [care and] services and that it is reasonable to believe that by providing such [care or] services, the child will be able to remain with *or be returned to* his family, [be placed in a more appropriate setting] or will be placed in an adoptive home. [No such project shall be approved by the commissioner of social services or the director of the budget without a prospective evaluation of the cost effectiveness of such project] ..... [3,750,000]
5,950,000

Work incentive program 1,487,000

Total of schedule ..... [1,839,595,400]
1,841,795,400

§ 11. The director of the budget shall enter into an agreement with a person, corporation or other organization, other than a state employee, official or agency, for the performance of a comprehensive evaluation of the implementation and effectiveness of "the child welfare reform act of 1979". Such evaluation shall assess: the overall effect of such act and amendments thereto in improving the management of the state's foster care system and in reducing inappropriate and unnecessary foster care; the efficacy and cost effectiveness of the use of various preventive services; the appropriateness and effectiveness of the various program and management standards established pursuant to section four hundred nine-a of the social services law; the efficacy and cost effectiveness of the increased reimbursement for preventive services made available pursuant to section four hundred nine-b of the social services law and for adoption services made available pursuant to section three hundred seventy-two-b of such law; the adequacy, accuracy and utility of the district-wide child welfare services plans required pursuant to section four hundred nine-d of such law and the department of social services' review of such plans; the appropriateness, clarity and usefulness of the standards for assessment for individual children established by the department pursuant to section four hundred nine-e of such law and the usefulness of standard assessment tools in insuring the provision of appropriate services to children and their families; the effect of such act on the manpower requirements of local social services districts and authorized agencies; the adequacy of department directives and the department's effectiveness in monitoring and assisting the implementation of such act; the effectiveness of the department's provision of technical assistance and training programs; the use and effectiveness of the various sanctions

required pursuant to section one hundred fifty-three-d and three hundred ninety-eight-b of such law, including failures to use such sanctions where required, and also including a review of the final disposition of cases for which reimbursement has been withheld or denied; the effectiveness of the state child care review service in aiding the management of child welfare services; the implementation by the department of section three hundred eighty-seven of the social services law; and the appropriateness of the apportionment of funds pursuant to section one hundred fifty-three-e of the social services law, including the effectiveness of the process by which the department evaluates applications for reimbursement beyond the amounts apportioned to various districts. The evaluation required pursuant to this section shall be included in an interim report to be submitted by the director of the budget to the governor and the legislature on or before September fifteenth, nineteen hundred eighty-two and in a final report to be submitted on or before April first, nineteen hundred eighty-five.

§ 12. The sum of one hundred fifty thousand dollars ($150,000), or so much thereof as may be necessary, is hereby appropriated to the department of social services out of any moneys in the state treasury in the general fund to the credit of the state purposes fund not otherwise appropriated for its activities necessary to assure full implementation of the provisions of the child welfare reform act of 1979 on its effective date.

§ 13. This act shall take effect on the first day of April, nineteen hundred eighty-one; except that sections two, five, eight and nine hereof shall take effect on the first day of April, nineteen hundred eighty; except that sections four and six hereof shall take effect on the ninetieth day next succeeding the date on which this act shall have become a law; and except that sections one, ten, eleven and twelve hereof and section four hundred nine-g of the social services law, as added by this act shall take effect immediately; provided, however, that section six hereof shall be applicable only to persons who are foster parents on or after the effective date of such section and only with respect to children who are in the care of such foster parents on or after such date; and provided further, however, that the state department of social services shall take all reasonable and necessary actions, including the provision of technical assistance to social services districts, prior to the effective dates of this act to make this act fully operative on its effective dates; and provided further that the state department of social services shall report to the governor and the legislature by January first of nineteen hundred eighty and nineteen hundred eighty-one on the progress made toward the implementation of this act.

STATE OF NEW YORK

717-A

1977-1978 Regular Sessions

IN SENATE

(Prefiled)

January 5, 1977

Introduced by Sens. HALPERIN, PISANI—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Finance—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the family court act, in relation to juvenile justice procedure

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision three of section five hundred fifteen-a of the executive law, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

3. A youth shall be placed in or transferred to a secure facility only:

(a) by order of the family court *pursuant to section seven hundred fifty-three-a of the family court act*; or

(b) after a hearing pursuant to regulations of the division, with the written approval of the director of the division or his or her designee.

§ 2. Subdivisions one and two of section seven hundred fifty of the family court act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the making of [an order pursuant to section seven hundred fifty-two, and may be used in a dispositional hearing and only therein] *the required findings.*

2. [After an order has been made pursuant to section seven hundred fifty-two] *After the completion of the fact-finding hearing and the making of the required findings* and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination by the child's law guardian or counsel or by the respondent if he is not represented by a law guardian or other counsel.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Except as provided in subdivision four, in its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review [or appeal in] *on* any [review or] appeal from the order of disposition. If such reports or memoranda are made available to respondent or his law guardian or counsel, they shall also be made available to the counsel presenting the petition. [Facts or opinions derived from such reports or memoranda may be utilized only in the course of a dispositional hearing.]

§ 3. Subdivision one of section seven hundred fifty-three-a of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. Where the respondent is found to have committed a designated felony act, the order of disposition shall be made within twenty days of the conclusion of the dispositional hearing and shall include a finding, based on a preponderance of the evidence, as to whether, for the purposes of this article, the respondent does or does not require a restrictive placement under this section, in connection with which the court shall make specific written findings of fact as to each of the elements set forth in paragraphs (a) through (d) in subdivision two of this section as related to the particular respondent. If the court finds that a restrictive placement under this section is not required, the order of disposition shall be as provided in section seven hundred fifty-three, not including subdivision [(e)] *(d)*. If the court finds that a restrictive placement is required, it shall continue the proceeding and enter an order of disposition for a restrictive placement. Every order under this section shall be a dispositional order, shall be made after a dispositional hearing and shall state the grounds for the order.

§ 4. Subdivision one of section seven hundred sixty of such act, as added by chapter eight hundred thirty-seven of the laws of nineteen hundred seventy-five and thus redesignated by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. Upon an adjudication of juvenile delinquency under this article, if the court also finds at a dispositional hearing pursuant to section seven hundred forty-five that the juvenile has a mental illness, as defined in section 1.05 of the mental hygiene law, which is likely to result in serious harm to himself or others, the court may issue an order placing or committing such juvenile with the division for youth. Any such order shall direct the temporary transfer for admission of the respondent to the custody of the commissioner of mental hygiene who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. Persons temporarily transferred to the department of mental hygiene under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the division for youth pursuant to the provisions of subdivision six of section five hundred seventeen of the executive law. Within thirty days of such transfer back, application shall be made by the division for youth to the placing or committing court to conduct a further dispositional hearing at which the court may make any order authorized under clauses a through [d] *c* of section seven hundred fifty-three, except that the period of any further order of disposition shall take into account the period of placement or commitment hereunder. Likelihood to result in serious harm shall mean (1) substantial risk of physical harm to himself as manifested by threats or attempts at suicide or

serious bodily harm or other conduct demonstrating he is dangerous to himself or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.

§ 5. This act shall take effect immediately.

STATE OF NEW YORK

S. 4017–C
Ca . No. 1661

A. 6372–C
Cal. No. 894

1977-1978 Regular Sessions

SENATE–ASSEMBLY

March 1, 1977

IN SENATE Introduced by Sens. HALPERIN, PISANI, DUNNE (at the request of the Temporary State Commission on Child Welfare) read twice and ordered printed, and when printed to be committed to the Committee on Judiciary committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee reported favorably from said committee and committed to the committee on Rules–reported favorably from said committee with amendments, ordered to third reading and to be reprinted as amended, retaining its place in the order of third reading.

IN ASSEMBLY Introduced by M. of A. LASHER read once and referred to the Committee on Child Care committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading passed by Assembly and delivered to the Senate–recalled from Senate vote reconsidered, bill amended ordered reprinted and restored to third reading.

AN ACT to amend the family court act, in relation to circumstances under which the corporation counsel or county attorney is required to approve a petition in a juvenile delinquency proceeding

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The family court act is hereby amended by adding thereto a new section, to be section seven hundred thirty-four-a, to read as follows:

§ 734-a. Approving a petition in a juvenile delinquency proceeding. (a) No juvenile delinquency petition may be filed under this article unless the corporation counsel or county attorney has approved such petition. Such approval of the petition shall be indicated by the signature of the corporation counsel or county attorney thereon.

(b) The corporation counsel or county attorney may in his discretion decline to approve a juvenile delinquency petition. In exercising such discretion the corporation counsel or county attorney shall give consideration to the form and sufficiency of the petition and the sufficiency of the available evidence. If the corporation counsel or county attorney declines to approve a petition he shall state his reasons therefor in writing. Such statement shall be signed by the corporation counsel or county attorney who declined to approve the petition and shall be filed in the office of such corporation counsel or county attorney.

(c) The corporation counsel or county attorney shall exercise his discretion under this section within thirty days after the date the petition was submitted for his approval. Any petition which has not been approved pursuant to this section, within

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

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such time period, shall be deemed approved or within any lesser period of time required to comply with section seven hundred twenty-nine of this act.

§ 2. Subdivision (b) of section seven hundred thirty-four of such act is hereby amended to read as follows:

(b) [The] *Subject to the provisions of section seven hundred thirty-four-a of this chapter, the* probation service may not prevent any person who wishes to file a petition under this article from having access to the court for that purpose.

§ 3. This act shall take effect on the ninetieth day next succeeding the date on which it shall have become a law and shall apply to juvenile delinquency petitions originated on or after the effective date of this act.

STATE OF NEW YORK

4280

1977-1978 Regular Sessions

IN SENATE

March 10, 1977

Introduced by Sens. HALPERIN, PISANI, DUNNE—(at the request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, and family court act, in relation to clarifying and revising procedures concerning juvenile justice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred forty-three of the executive law, as separately amended by chapters three hundred eighty-seven and five hundred eighty-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§ 243. Supervision of administration of local probation. The director shall exercise general supervision over the administration of probation throughout the state, including probation in family courts and shall collect statistical and other information and make recommendations regarding the administration of probation in the courts. He shall endeavor to secure the effective application of the probation system and the enforcement of the probation laws and the laws relating to family courts throughout the state. After consultation with the state probation commission, he shall adopt general rules which shall regulate methods and procedure in the administration of probation, including investigation of defendants prior to sentence, and children prior to adjudication, supervision, case work, record keeping and accounting, program planning and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state. *Such rules shall provide that the probation investigations ordered by the court in designated felony act cases under subdivision three of section seven hundred fifty of the family court act shall have priority over other cases arising under article seven of such act.* Such rules shall be binding upon all probation officers and when duly adopted shall have the force and effect of law, but shall not supersede rules that may be adopted pursuant to the family court act. He shall keep himself informed as to the work of all probation officers and shall from time to time inquire into and report upon their conduct and efficiency. He may investigate the work of any probation bureau or probation officer and shall have access to all records and probation

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD7-29-416.3

offices. He may issue subpoenas to compel the attendance of witnesses or the production of books and papers. He may administer oaths and examine persons under oath. He may recommend to the appropriate authorities the removal of any probation officer. He shall transmit to the governor not later than February first of each year an annual report of the work of the division of probation for the preceding calendar year, which shall include such information relative to the administration of probation throughout the state as may be appropriate. He may from time to time publish reports regarding probation including probation in family courts, and the operation of the probation system including probation in family courts and any other information regarding probation as he may determine provided expenditures for such purpose are within amounts appropriated therefor.

§ 2. Subdivision two of section five hundred eleven of such law, as amended by chapter five hundred fifteen of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

2. Each school and center is authorized to receive juvenile delinquents placed with the division by the family court pursuant to [section] *sections seven hundred fifty-three-a and* seven hundred fifty-six of the family court act.

§ 3. Subdivision one of section five hundred fifteen-a of such law, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. As used in this article, "secure facility" means a *residential* facility in which a juvenile delinquent may be placed under this article, which is characterized by physically restricting construction, hardware and procedures, and is designated as a secure facility by the division under this section.

§ 4. Subdivision two of section five hundred twenty-five of such law, as amended by chapter five hundred twenty of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

2. [Any] *Except as provided in subdivision three, any* child who has been placed with the division shall be deemed to have been discharged therefrom if, during the period provided in the order of placement or extension thereof, he is convicted of a crime or adjudicated a youthful offender, and is committed to an institution in the department of correctional services or department of mental hygiene.

§ 5. Subdivision (j) of section seven hundred twelve of the family court act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

(j) "Secure facility". A *residential* facility in which a juvenile delinquent may be placed under this article, which is characterized by physically restricting construction, hardware and procedures, and is designated as a secure facility by the division for youth.

§ 6. Section seven hundred forty-two of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§ 742. Judge to preside in juvenile delinquency proceedings. *1.* In any juvenile delinquency proceeding under this article, the judge who presides at the commencement of the fact-finding hearing shall continue to preside at the fact-finding hearing or any adjournment thereof, and at any other subsequent hearing in the proceeding. However, where the judge cannot preside

(i) by reason of illness, disability, vacation, or no longer being a judge of the court, or is removed from the proceeding by reason of bias, prejudice or similar grounds; or

(ii) in cases heard outside the city of New York, if it is not practicable for the judge to preside; the rules of the family court shall provide for the assignment of the proceeding to another judge of the court.

2. The provisions of this section shall not be waived.

§ 7. Subdivision (c) of section seven hundred forty-eight of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

(c) [Where the petition alleges that the respondent committed a designated felony act, the] *The* court shall state on the record the reason for any adjournment of the fact-finding hearing.

§ 8. Subdivision (d) of section seven hundred forty-nine of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

(d) Where the [respondent is found to have] *petition alleges that the respondent has* committed a designated felony act:

(i) the court shall not order an adjournment in contemplation of dismissal under this section;

(ii) an adjournment under subdivision (b) of this section may be for a period of up to thirty days if the respondent is detained, and no additional adjournments may be granted in the absence of special circumstances, *except as provided in subdivision four of section seven hundred fifty. The court shall state on the record the facts constituting such special circumstances, which may include, but not be limited to, delays in receipt of probation reports or diagnostic assessments resulting from the inability of the probation service or any person, hospital, clinic or institution to furnish such reports or assessment within the time originally designated by the court. If an additional adjournment is granted on a finding of special circumstances while the respondent is in detention, where a restrictive placement is subsequently ordered, time spent by the respondent in detention during such additional adjournment shall be credited and applied against the term of secure confinement ordered by the court pursuant to subparagraph (ii) of paragraph a of either subdivision three or four of section seven hundred fifty-three-a.*

§ 9. Subdivision (c) of section seven hundred twelve of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

(c) "Detention". The temporary care and maintenance away from their own homes of children held for or at the direction of the family court pending adjudication of alleged juvenile delinquency or need for supervision by such court or pending transfer to institutions or facilities to which [committed or] placed by such court or while awaiting disposition by such court after adjudication.

§ 10. Paragraph (e) of subdivision one of section seven hundred fifty-three of such act, as added by chapter eight hundred thirty-seven of the laws of nineteen hundred seventy-five, such subdivision as designated by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six,is hereby amended to read as follows:

(e) Placing [or committing] the respondent in accordance with the provisions of section seven hundred sixty.

§ 11. Subdivision five of section seven hundred fifty-eight-a of such act, as added by chapter eight hundred eighty-two of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

5. The court, upon receipt of the reports provided for in subdivision three or four of this section may, on its own motion or the motion of any party or the agency, hold a hearing to determine whether the placement [or commitment] should be altered or modified.

§ 12. Subdivisions (e) and (f) of section seven hundred fifty-nine of such act, subdivision (f) as added by chapter six hundred six of the laws of nineteen hundred seventy-six, are hereby amended to read, respectively, as follows:

(e) to refrain from acts of commission or omission that tend to make the home not a proper place for the child. The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child [or to commit a child] to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

(f) to participate in family counseling or other professional counseling activities conducted by an authorized person or an authorized agency to which the child has been referred[,] *or* placed [or committed], including the division for youth, deemed necessary for the rehabilitation of the child, provided that such family counseling or other counseling activity is not contrary to such person's religious beliefs.

§ 13. Subdivisions one and four of section seven hundred sixty of such act, such section having been added by chapter eight hundred thirty-seven of the laws of nineteen hundred seventy-five and such subdivisions as so designated by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, are hereby amended to read, respectively, as follows:

1. Upon an adjudication of juvenile delinquency under this article, if the court also finds at a dispositional hearing pursuant to section seven hundred forty-five that the juvenile has a mental illness, as defined in section 1.05 of the mental hygiene law, which is likely to result in serious harm to himself or others, the court may issue an order placing [or committing] such juvenile with the division for youth. Any such order shall direct the temporary transfer for admission of the respondent to the custody of the commissioner of mental hygiene who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. Persons temporarily transferred to the department of mental hygiene under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the division for youth pursuant to the provisions of subdivision six of section five hundred seventeen of the executive law. Within thirty days of such transfer back, application shall be made by the division for youth to the placing [or committing] court to conduct a further dispositional hearing at which the court may make any order authorized under clauses a through d of section seven hundred fifty-three, except that the period of any further order of disposition shall take into account the period of placement [or commitment] hereunder. Likelihood to result in serious harm shall mean (1) substantial risk of physical harm to himself as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating he is dangerous to himself or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.

4. No order of disposition placing [or committing] the respondent in accordance with this section shall be entered except upon a preponderance of competent evidence which shall include the testimony of two examining physicians as provided in section two hundred fifty-one..

§ 14. Section seven hundred eighty-two-a of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§ 782-a. Transfer of records and information to institutions and agencies. Whenever a person is [committed to the care and custody of or] placed with an institution suitable for the [commitment or] placement of a person adjudicated delinquent or in need of supervision maintained by the state or any subdivision thereof or to an authorized agency including the division for youth, the family

court so [committing or] placing such person shall forthwith transmit a copy of the orders of the family court pursuant to section seven hundred fifty-two and either seven hundred fifty-three, seven hundred fifty-three-a or seven hundred fifty-four of this article, and of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such child, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records with respect to such person to such institution or agency, notwithstanding any contrary provision of law.

§ 15. Section seven hundred sixty-four of such act, as amended by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§ 764. Petition to terminate placement [or commitment]. Any parent or guardian or duly authorized agency or next friend of a person placed under sections seven hundred fifty-three-a or seven hundred fifty-six [or committed under section seven hundred fifty-eight] may petition to the court for an order terminating the placement [or commitment]. The petition must be verified and must show:

(a) except in the case of a person placed pursuant to section seven hundred fifty-three-a, that an application for release of the respondent was made to the duly authorized agency with which the child was placed [or to the institution to which the respondent was committed];

(b) except in the case of a person placed pursuant to section seven hundred fifty-three-a, that the application was denied or was not granted within thirty days from the day application was made; and

(c) the grounds for the petition.

§ 16. Section seven hundred sixty-six of such act is hereby amended to read as follows:

§ 766. Examination of petition and answer; hearing. The court shall promptly examine the petition and answer. If the court concludes that a hearing should be had, it may proceed upon due notice to all concerned to hear the facts and determine whether continued placement [or commitment] serves the purposes of this article. If the court concludes that a hearing need not be had, it shall enter an order granting or denying the petition.

§ 17. Section seven hundred sixty-seven of such act is hereby amended to read as follows:

§ 767. Orders on hearing. (a) If the court determines after hearing that continued placement [or commitment] serves the purposes of this article, it shall deny the petition. The court may, on its own motion, reduce the duration of the placement [or commitment], change the agency in which the child is placed [or the institution to which it is committed], or direct the agency [or institution] to make such other arrangements for the person's care and welfare as the facts of the case may require.

(b) If the court determines after hearing that continued placement [or commitment] does not serve the purposes of this article, the court shall discharge the person from the custody of the agency [or the institution] and may place the person on probation or under the supervision of the court.

§ 18. Section seven hundred seventy-one of such act is hereby amended to read as follows:

§ 771. Discontinuation of treatment by agency or institution. If an authorized agency in which a person is placed under section seven hundred fifty-six [or if an institution to which a person is committed under section seven hundred fifty-eight]

(a) discontinues or suspends its work; or

(b) is unwilling to continue to care for the person for the reason that support by the state of New York or one of its political subdivisions has been discontinued; or

(c) so fundamentally alters its program that the person can no longer benefit from it, the person shall be returned by the agency to the court which entered the order of placement [or of commitment].

§ 19. Section seven hundred seventy-two of such act is hereby amended to read as follows:

§ 772. Action on return from agency or institution. If a person is returned to the court under section seven hundred seventy-one, the court may make any order that might have been made at the time the order of placement [or of commitment] was made, except that the maximum duration authorized for any such order shall be decreased by the time spent in placement [or in commitment].

§ 20. Section seven hundred seventy-three of such act is hereby amended to read as follows:

§ 773. Petition for transfer for incorrigibility. Any institution, society or agency, except a state training school, in which a person was placed under section seven hundred fifty-six [or committed under section seven hundred fifty-eight] may petition to the court which made the order of placement [or commitment] for transfer [and commitment] of that person to a society or agency, governed or controlled by persons of the same religious faith or persuasion as that of the child, where practicable, or, if not practicable, to some other suitable institution, or to some other suitable institution on the ground that such person (a) is incorrigible and that his or her presence is seriously detrimental to the welfare of the applicant institution, society, agency or other persons in its care, or

(b) after [commitment] *placement* by the court was released on parole or probation from such institution, society or agency and a term or condition of the release was willfully violated. The petition shall be verified by an officer of the applicant institution, society or agency and shall specify the act or acts bringing the person within this section.

§ 21. Section seven hundred seventy-five of such act is hereby amended to read as follows:

§ 775. Order on hearing. (a) After hearing a petition under section seven hundred seventy-three, the court may:

(i) dismiss the petition;

(ii) [grant the petition, making such commitment, if the court was authorized to make such commitment upon the original adjudication;

(iii)] grant the petition, making such placement, if the court was authorized to make such placement upon the original adjudication; or

[(iv)] *(iii)* terminate the prior order of placement [or commitment] and either discharge the respondent or place him on probation.

(b) If the court grants the petition and orders [commitment or] placement, the respondent shall thereupon be transferred to the custody of the person, agency or institution provided by the court's order.

§ 22. Notwithstanding any other provision of law, the rights, procedures and remedies available pursuant to parts five, six and seven of article seven of the family court act shall be available with respect to persons committed pursuant to former section seven hundred fifty-eight of the family court act, which section was repealed by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, as if such persons had been placed pursuant to article seven of the family court act. For purposes of such parts five, six and seven, the terms "placement" and "placed" shall be deemed to include the

terms "commitment" or "committed" for persons committed pursuant to former section seven hundred fifty-eight of the family court act, except that nothing in this act shall be construed to authorize an extension of a commitment.

§ 23. Notwithstanding any other provision of law to the contrary, no commitment shall be made after the effective date of this act pursuant to former section seven hundred fifty-eight of the family court act which section was repealed by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, but this section of this act is not applicable to suspended judgements or judgements imposing probation entered prior to the effective date of this act.

§ 24. This act shall take effect immediately, except that sections one, seven and eight shall take effect sixty days after it shall have become a law and section eleven shall take effect on the first day of April, nineteen hundred seventy-seven.

STATE OF NEW YORK

Cal. No. 739 4538-A

1977-1978 Regular Sessions

IN SENATE

March 16, 1977

Introduced by Sens. HALPERIN, PISANI, DUNNE—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Finance—reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to Assembly, substituted for Assembly no. 6818 by M. of A. LASHER, passed by Assembly, delivered to Governor, recalled from Governor, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to release or discharge of children from schools or centers of the division for youth

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section five hundred twenty-three of the executive law, as amended by chapter eight hundred twenty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. The division may release from a school or center any child placed with the division whenever it deems such release to be in the best interest of the child [and], *that* suitable care and supervision can be provided *and that there is a reasonable probability that the child can be released without endangering the public safety*; provided however, that no child while absent from a school or center without the consent of the superintendent or director of such facility shall be released by the division *solely by reason of the absence.* The division may establish regulations in connection with such release.

§ 2. Subdivision one of section five hundred twenty-five of such law, as amended by chapter eight hundred twenty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. The division may discharge from its custody any child placed with the division *whenever it deems such discharge to be in the best interest of the child and that there is reasonable probability that the child can be released without endangering the public safety*; provided, however, that no child while absent from a school or center without the consent of the superintendent or director of such facility shall

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

be discharged by the division *solely by reason of the absence*. The division shall establish regulations in connection with such discharge.

§ 3. Subdivision four of section five hundred twenty-three of such law, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

4. [No] *In addition to the other requirements of this section, no* child placed with the division pursuant to a restrictive placement under the family court act shall be released from a secure or residential facility except pursuant to section seven hundred fifty-three-a of the family court act.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.

STATE OF NEW YORK

Cal. No. 1183 5856—A

1977-1978 Regular Sessions

IN SENATE

May 10, 1977

Introduced by Sen. HALPERIN—read twice and ordered printed, and when printed to be committed to the Committee on Finance—reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the executive law, in relation to discharge from custody of children by the division for youth

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section five hundred twenty-five of the executive law, as amended by chapter eight hundred twenty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

1. The division may discharge from its custody any child placed with the division; provided, however, that no child while absent from a school or center without the consent of the superintendent or director of such facility shall be discharged by the division, *and provided further that no child in the custody of the division and transferred to the department of mental hygiene, while absent from a department of mental hygiene facility without the consent of the superintendent or director of such facility, shall be discharged by the division.* The division shall establish regulations in connection with such discharge.

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD7-20-289A

STATE OF NEW YORK

S. 7420 A. 9639

SENATE–ASSEMBLY

January 24, 1978

IN SENATE—Introduced by Sen. HALPERIN—(at the request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY—Introduced by M. of A. LASHER—(at the request of the Temporary State Commission on Child Welfare)—read once and referred to the Committee on Child Care

AN ACT to amend the executive law, in relation to admissions to division for youth facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section five hundred eleven of the executive law, as amended by chapter five hundred fifteen of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

1. The schools and centers shall be for the training, care and rehabilitation of children adjudicated as juvenile delinquents for their acts or conduct while under the age of sixteen, who are under the age of [seventeen] *eighteen* at the time of placement. Such institutions may be classified in accordance with program provided or by age or sex of the children.

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in italics is new, matter in brackets [ ] is old law to be omitted.

LBD8-25-65

STATE OF NEW YORK

S. 8330 A. 10897

SENATE–ASSEMBLY

March 7, 1978

IN SENATE—Introduced by Sens. HALPERIN, PISANI—(at request of Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY—Introduced by M. of A. LASHER—read once and referred to the Committee on Child Care

AN ACT to amend the family court act, in relation to juvenile delinquency petitions and repealing subdivision (c) of section two hundred fifty-four of such act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seven hundred thirty-four-a of the family court act, as added by chapter nine hundred six of the laws of nineteen hundred seventy-seven, is hereby amended to read as follows:

§ 734-a. Approving a petition in a juvenile delinquency proceeding. (a) [No] *Except as provided in subdivision (b), no* juvenile delinquency petition may be filed under this article unless the corporation counsel or county attorney has approved such petition. Such approval of the petition shall be indicated by the signature of the corporation counsel or county attorney thereon.

(b) *Where an agreement has been entered into between the district attorney and the county attorney of a county or between the corporation counsel of the city of New York and the district attorney of any county in such city pursuant to section two hundred fifty-four-a of this act, no petition alleging the commission of a designated felony act may be filed unless the district attorney has approved such petition. Approval of the petition shall be indicated by the signature of the district attorney thereon.*

(c) The corporation counsel [or], county attorney *or district attorney* may in his discretion decline to approve a juvenile delinquency petition. In exercising such discretion [the corporation counsel or county attorney shall give] consideration *shall be given* to the form and sufficiency of the petition and the sufficiency of the available evidence. If the corporation counsel [or], county attorney *or district attorney* declines to approve a petition he shall state his reasons therefor in writing. Such statement shall be signed by the corporation counsel [or], county attorney *or district attorney* who declined to approve the petition and shall be filed in [the] *his* office [of such corporation counsel or county attorney]. *In addition, when the district attorney has declined to approve the*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-50-244

petition, a copy of such statement shall be provided to the appropriate corporation counsel or county attorney.

[(c)**]** *(d)* The corporation counsel **[**or**]**, county attorney *or district attorney* shall exercise his discretion under this section within thirty days after the date the petition was submitted for his approval. Any petition which has not been approved pursuant to this section, within such time period or within any lesser period of time required to comply with section seven hundred twenty-nine of this act, shall be deemed approved.

§ 2. Subdivision (c) of section two hundred fifty-four of such act is hereby **repealed.**

§ 3. Such act is hereby amended by adding a new section two hundred fifty-four-a to read as follows:

§ 254-a. Procedure for district attorney presentation. 1. The county attorney and the district attorney of a county, and the corporation counsel of the city of New York and the district attorney of any county in such city, may enter into an agreement whereby the district attorney shall present the case in support of the petition in which a designated felony act has been alleged.

2. Where such agreement has been entered into, in the case of a respondent who is alleged to have done two or more acts which, if done by an adult, would constitute joinable offenses pursuant to subdivision two of section 200.20 of the criminal procedure law, the district attorney shall present the juvenile delinquency petition with respect to all such acts, notwithstanding less than all of such acts constitute designated felony acts.

3. Where such agreement has been entered into, the district attorney shall also present petitions which have been filed against all respondents who are accused of participating, in concert, in the commission of a designated felony act, notwithstanding less than all of such respondents are charged with having committed a designated felony act. Such petition shall be adjudicated in a single fact-finding hearing, unless the court orders separate fact-finding hearings for good cause shown.

4. When presenting cases the district attorney shall have the same powers under this act as the corporation counsel or county attorney and shall assist in all stages of the proceedings including appeals in connection therewith.

5. Such agreement shall be subject to the approval in the city of New York of its mayor, and outside the city of the respective county executive, if there be one, otherwise, the board of supervisors.

§ 4. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

STATE OF NEW YORK

9672—B

IN SENATE

April 26, 1978

Introduced by Sens. HALPERIN, PISANI—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported favorably from said committee and committed to the Committee on Rules—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to waiver of counsel

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The family court act is hereby amended by adding a new section two hundred forty-nine-a to read as follows:

§ 249-a. Waiver of counsel. A minor who is a subject of a juvenile delinquency or person in need of supervision proceeding shall be presumed to lack the requisite knowledge and maturity to waive the appointment of a law guardian. This presumption may be rebutted only after a law guardian has been appointed and the court determines after a hearing at which the law guardian appears and participates and upon clear and convincing evidence that (a) the minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges, (b) the minor possesses the maturity, knowledge and intelligence necessary to conduct his own defense, and (c) waiver is in the best interest of the minor.

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-20-6541B

STATE OF NEW YORK

S. 10307-A

A. 12415-A
R.R. 69

SENATE-ASSEMBLY

May 23, 1978

IN SENATE—Introduced by Sens. HALPERIN, BERNSTEIN, DUNNE, GALLAGHER, MENDEZ, OWENS, PISANI, SCHERMERHORN, B C. SMITH, VOLKER—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary—reported favorably from said committee and committed to the Committee on Rules—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY—Introduced by M. of A. SCHIMMINGER, LASHER—read once and referred to the Committee on Child Care—passed by Assembly and delivered to the Senate—recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the family court act, in relation to home visits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Clause (iv) of paragraph (a) of subdivision three of section seven hundred fifty-three-a of the family court act, as amended by chapter eight hundred twenty-four of the laws of nineteen hundred seventy-seven, is hereby amended to read as follows:

(iv) The respondent may not be released from a secure facility or transferred to a non-secure facility during the period provided in clause (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided in clause (iii) of this paragraph. *No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a non-secure residential facility within six months after confinement in a secure facility; and (C) while a youth is confined in a non-secure residential facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 2. Clause (iv) of paragraph (a) of subdivision four of section seven hundred fifty-three-a of such act, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

(iv) The respondent may not be released from a secure facility or transferred to a non-secure facility during the period provided by the court pursuant to clause (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided by the court pursuant to clause (iii) of this paragraph. *No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a non-secure residential facility within six months after confinement in a secure facility; and (C) while a youth is confined in a non-secure residential facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.*

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.

STATE OF NEW YORK

S. 523—B
Cal. No. 44

A. 547—B

1979-1980 Regular Sessions

SENATE–ASSEMBLY

(Prefiled)

January 3, 1979

IN SENATE—Introduced by Sens. HALPERIN, PISANI, CONNOR, BABBUSH, GOODMAN, GAZZARA, KNORR, LACK, MARKOWITZ, WEINSTEIN—(at request of the Temporary State Commission on Child Welfare)—read twice and ordered printed, and when printed to be committed to the Committee on Codes—reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading—again amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY—Introduced by M. of A. LASHER—Multi-Sponsored by—M. of A. SMOLER—(at request of the Temporary State Commission on Child Welfare)—read once and referred to the Committee on Child Care—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to unauthorized presence in school buildings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision five of section 240.35 of the penal law, as amended by chapter seven hundred ninety-one of the laws of nineteen hundred sixty-seven, is amended to read as follows:

5. Loiters or remains in or about **[**a**]** school *grounds, a* college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same; or

§ 2. Subdivision two of section 140.00 of such law, as amended by chapter eleven hundred fifty-one of the laws of nineteen hundred sixty-nine, is amended to read as follows:

EXPLANATION — Matter in *italics* is new; matter in brackets **[** **]** is old law to be omitted.

LBD9-41-1080B

2. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, *or used as an elementary or secondary school,* or an inclosed motor truck, or an inclosed motor truck trailer. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.

§ 3. Subdivision five of section 140.00 of such law is amended to read as follows:

5. "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. *A person who enters or remains in or about a school building without written permission from someone authorized to issue such permission or without a legitimate reason which includes a relationship involving custody of or responsibility for a pupil or student enrolled in the school or without legitimate business or a purpose relating to the operation of the school does so without license and privilege.*

§ 4. Section 140.10 of such law, as amended by chapter three hundred forty-one of the laws of nineteen hundred sixty-nine, is amended to read as follows:

§ 140.10 Criminal trespass in the third degree.

A person is guilty of criminal trespass in the third degree *(a)* when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders, *or (b) when he knowingly enters or remains unlawfully in a building that is an elementary or secondary school in violation of conspicuously posted rules or regulations governing entry and use thereof or in violation of a personally communicated request to leave the premises from a principal, custodian or other person in charge thereof.*

Criminal trespass in the third degree is a class B misdemeanor.

§ 5. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

STATE OF NEW YORK

3915-A

1979-1980 Regular Sessions

IN ASSEMBLY

February 27, 1979

Introduced by M. of A. LASHER—(at request of the Temporary State Commission on Child Welfare)—read once and referred to the Committee on Child Care—reported and referred to the Committee on Rules—Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the family court act and the mental hygiene law, in relation to the capacity of juveniles to participate in certain procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seven hundred twelve of the family court act is amended by adding a new subdivision (1) to read as follows:

(1) "Incapacitated person". In the case of a petition to determine delinquency, an incapacitated person is a respondent who, as a result of mental illness, mental retardation or developmental disability as defined in subdivisions twenty, twenty-one and twenty-two of section 1.03 of the mental hygiene law, lacks capacity to understand the proceedings against him or to assist in his own defense.

§ 2. Section seven hundred forty-one of such act is amended by adding a new subdivision (d) to read as follows:

(d) At any juvenile delinquency proceeding under this article, the court must issue an order that the respondent be examined pursuant to section two hundred fifty-one of this act when it is of the opinion that the respondent may be an incapacitated person. Notwithstanding the provisions of this or any other law, the court may direct that the examination be conducted on an outpatient basis when the respondent is not in custody at the time the court issues an order of examination. The court shall order that two qualified psychiatrists as defined in subdivision five of section 730.10 of the criminal procedure law examine the respondent to determine if he is mentally ill, or if the court is of the opinion that the respondent may be mentally retarded or developmentally disabled, it may order one or two qualified psychiatrists and one certified psychologist as defined in subdivision six of section 730.10 of the criminal procedure law to examine the respondent.

§ 3. Such act is amended by adding a new section seven hundred forty-eight-a to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

A

§ 748-a. Proceedings to determine capacity. (a) If an order of examination has been issued pursuant to subdivision (d) of section seven hundred forty-one of this article, the fact finding hearing shall be adjourned until the examination reports have been submitted to the court. Every examination report ordered pursuant to subdivision (d) of section seven hundred forty-one of this article must be filed with the court within ten days after entry of the order of examination in the office of the clerk of the court. Upon a showing of special circumstances and a finding that a longer period is necessary to complete the examination and report, the court may extend the time for filing the examination report.

(b) Upon receipt of the examination reports, the court shall conduct a hearing to determine whether the respondent is an incapacitated person. The respondent, the counsel or law guardian for the respondent and the commissioner of mental health of the commissioner of mental retardation and developmental disabilities, as appropriate, shall be notified of such hearing within twenty-four hours of the scheduling of such hearings and afforded an opportunity to be heard.

(c) If the court finds that the respondent is not an incapacitated person, it shall proceed with the fact finding hearing.

(d) If the court finds that the respondent is an incapacitated person, the court shall initiate a hearing to determine whether there is probable cause to believe that the respondent committed an act which would be a crime if committed by an adult.

(e) If the court finds that there is probable cause to believe that the respondent committed an act which would be a misdemeanor if committed by an adult, the respondent shall be committed to the custody of the appropriate commissioner for a reasonable period not to exceed ninety days. The court shall dismiss the petition on the issuance of the order of commitment.

(f) (i) If the court finds that there is probable cause to believe that the respondent committed an act which would be a felony if committed by an adult, it shall order the respondent committed to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities for an initial period not to exceed one year from the date of such order. Such period may be extended annually upon further application to the court by the commissioner having custody or his designee. Such application must be made within sixty days prior to the expiration of such period on forms that have been jointly adopted by the judicial conference and the commissioner. At that time, the commissioner must give written notice of the application to the respondent and the counsel or law guardian representing the respondent. Upon receipt of such application, the court must conduct a hearing to determine the issue of capacity. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the respondent is no longer incapacitated, he shall be returned to the family court for further proceedings pursuant to this article. If the court is satisfied that the respondent continues to be incapacitated, the court shall authorize continued custody of the respondent by the commissioner for a period not to exceed one year. Such extensions shall not continue beyond a reasonable period of time necessary to determine whether the respondent will attain the capacity to proceed to a fact finding hearing in the foreseeable future but in no event shall continue beyond the respondent's eighteenth birthday.

(ii) If a respondent is in the custody of the commissioner upon the respondent's eighteenth birthday the commissioner shall notify the clerk of the court that the respondent was in his custody on such date and the court shall dismiss the petition.

(iii) If the court finds that there is probable cause to believe that the respondent has committed a designated felony act, the court shall require that treatment be provided in a residential facility within the appropriate office of the mental hygiene department.

(g) The commissioner shall review the condition of the respondent within forty-five days after the respondent is committed to the custody of the commissioner. He

shall make a second review within ninety days after the respondent is committed to his custody. Thereafter, he shall review the condition of the respondent every ninety days. The respondent and the counsel or law guardian for the respondent, shall be notified of any such review and afforded an opportunity to be heard. The commissioner having custody shall apply to the court for an order dismissing the petition wherever he determines that there is a substantial probability that the respondent will continue to be incapacitated for the foreseeable future. At the time of such application the commissioner must give written notice of application to the respondent and the counsel or law guardian representing the respondent. Upon receipt of such application, the court may on its own motion conduct a hearing to determine whether there is substantial probability that the respondent will continue to be incapacitated for the foreseeable future, and it must conduct such hearing if a demand therefor is made by the respondent, his counsel or law guardian within ten days from the date that notice of application was given them. The respondent may apply to the court for an order of dismissal on the same ground.

(h) Any order pursuant to this section dismissing a petition shall not preclude an application for voluntary or involuntary care and treatment in a facility of the appropriate office of the department of mental hygiene pursuant to the provisions of the mental hygiene law. Unless the respondent is admitted pursuant to such an application he shall be released.

(i) If the commissioner having custody of a child committed to a residential facility determines at any time that such child may be more appropriately treated in a non-residential facility, he may petition the family court for a hearing. If the court finds after the hearing that treatment in a non-residential facility would be more appropriate for such child, the court shall modify its order of commitment to authorize transfer of such child to a non-residential facility. Application for such a hearing may be made by the respondent.

(j) If the commissioner having custody of the child determines at any time that such child is not an incapacitated person, he shall petition the family court for a hearing. The respondent and the counsel or law guardian for the respondent shall be notified of such hearing within twenty-four hours of the scheduling of such hearing and afforded an opportunity to be heard. Application for such a hearing may be made by the respondent. If the court finds after the hearing that the child is no longer incapacitated, he shall be returned to the family court for further proceedings pursuant to this article.

(k) Time spent by the respondent in the custody of a commissioner of an office within the department of mental hygiene or in a local hospital or detention facility pending transfer to the custody of the commissioner after a finding of incapacity, shall be credited and applied towards the period of placement specified in a dispositional order on the original petition.

§ 4. Section two hundred forty-nine of such act, as amended by chapter four hundred eighty-one of the laws of nineteen hundred seventy-eight, is amended to read as follows:

§ 249. Appointment of law guardian. (a) In a proceeding under articles seven or ten of this act or under section three hundred eighty-four-b of the social services law, or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this chapter, the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six *or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation pursuant to section seven hundred forty-*

eight-a of such act, the court shall not permit the respondent to waive his right to be represented by counsel chosen by him or his parent or other person legally responsible for his care, or by a law guardian. In any other proceeding in which the court has jurisdiction, the court may appoint a law guardian to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

(b) Notwithstanding any other provision of law, a proceeding under article seven of this act following an order of removal made pursuant to article seven hundred twenty-five of the criminal procedure law, the court shall, wherever practicable, appoint the counsel representing the juvenile offender in the criminal proceedings as law guardian.

§ 5. Section 7.09 of the mental hygiene law is amended by adding a new subdivision (d) to read as follows:

(d) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section seven hundred forty-eight-a of the family court act. He may place the juvenile in any appropriate facility or program under his jurisdiction, but he shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (iii) of subdivision (f) of section seven hundred forty-eight-a of the family court act. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivisions (e) and (f) of section seven hundred forty-eight-a of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section seven hundred forty-eight-a of the family court act and he may petition the family court at any time for any relief authorized by such section.

§ 6. Section 13.09 of such law is amended by adding a new subdivision (c) to read as follows:

(c) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section seven hundred forty-eight-a of the family court act. He may place the juvenile in any appropriate facility or program under his jurisdiction, but he shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (iii) of subdivision (f) of section seven hundred forty-eight-a of the family court act. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivisions (e) and (f) of section seven hundred forty-eight-a of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section seven hundred forty-eight-a of the family court act and he may petition the family court at any time for any relief authorized by such section.

§ 7. This act shall take effect on the sixtieth day after it shall have become a law.